

EXHIBIT 2

The Honorable Ronald B. Leighton

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

CHERYL KATER and SUZIE KELLY,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

CHURCHILL DOWNS INCORPORATED, a
Kentucky corporation, and BIG FISH
GAMES, INC., a Washington corporation,

Defendants.

Case No.: 2:15-cv-00612-RBL

**DECLARATION OF DAVID
GROSSMAN IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER AND LIMITED RELIEF
FROM LITIGATION STAY**

Hearing Date: November 4, 2019

MANASA THIMMEGOWDA, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

BIG FISH GAMES, INC., a Washington
corporation; ARISTOCRAT
TECHNOLOGIES INC., a Nevada
corporation; ARISTOCRAT LEISURE
LIMITED, an Australian corporation; and
CHURCHILL DOWNS INCORPORATED, a
Kentucky corporation,

Defendants.

Case No.: 2:19-cv-00199-RBL

**DECLARATION OF DAVID
GROSSMAN IN SUPPORT OF
DEFENDANTS' OPPOSITION TO
PLAINTIFFS' MOTION FOR
TEMPORARY RESTRAINING
ORDER AND LIMITED RELIEF
FROM LITIGATION STAY**

Hearing Date: November 4, 2019

1 I, David Grossman, hereby declare as follows:

2 1. I am the Senior Director of Engineering at Big Fish Games, Inc. (“BFG”).
3 I have been employed by BFG since October 2012. My responsibilities as Senior Director of
4 Engineering include supporting general engineering and product development efforts at BFG. I
5 make this declaration based on my personal knowledge and, if called as a witness, I could and
6 would competently testify thereto.

7 2. The BFG Terms of Use (“TOU”) apply to all Big Fish Casino (“BFC”) users. BFG periodically makes changes to the TOU. Based on my review of BFG business
8 records, since March 24, 2015, five versions of the TOU have been effect. Those TOU are dated
9 March 24, 2015; November 30, 2017; August 14, 2018; March 28, 2019; and August 28, 2019.

10 3. A true and correct copy of the March 24, 2015 TOU is attached hereto as
11 **Exhibit A**. A true and correct copy of the November 30, 2017 TOU is attached hereto as
12 **Exhibit B**. A true and correct copy of the August 14, 2018 TOU is attached hereto as **Exhibit C**.
13 A true and correct copy of the March 28, 2019 TOU is attached hereto as **Exhibit D**. A true and
14 correct copy of the August 28, 2019 TOU is attached hereto as **Exhibit E**.

15 4. On October 14, 2019, BFG disseminated an in-game overlay, or “pop-up,”
16 to approximately 30% of BFC users. In the ordinary course of exercising my responsibilities as
17 Senior Director of Engineering, I helped to implement the October 14 pop-up.

18 5. The pop-up stated, “We’ve updated our **TERMS OF USE**, which include
19 mandatory arbitration and class action waiver provisions that apply to past, current, and future
20 disputes. *By clicking the button below or continuing to access this game, you agree to the **Terms***
21 ***of Use**. This means you will not be able to participate in the class action lawsuits filed in the*
22 *Western District of Washington (Case Nos. 15-cv-00612-RBL and 2:19-cv-00199-RBL).”* The
23 bolded language in the pop-up message indicated the presence of a hyperlink. Clicking that
24 hyperlink opens for the user a copy of the August 28, 2019 TOU.

25 6. A true and correct copy of the October 14 pop-up is attached hereto as
26 **Exhibit F**.
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1 7. In the ordinary course of exercising my responsibilities as Senior Director
2 of Engineering, I have access to and rely upon business records documenting users' interaction
3 with the BFC product and purchase history. I am familiar with the manner in which, in the
4 ordinary course of business, these records are compiled. I consider these business records to be
5 accurate and reliable.

6 8. Based on my review of BFG's business records, I determined that users
7 who received the October 14 pop-up included users who have made in-game purchases and users
8 who have never made in-game purchases.

9 9. Based on my review of BFG's business records, I determined that
10 approximately 25% of the users to whom the October 2014 pop-up was disseminated had
11 previously clicked to accept the TOU in January 2016, when BFG disseminated a similar in-
12 game overlay to BFC users.

13 10. Based on my review of BFG's business records, I determined that over
14 90% of BFC users have never purchased virtual items while using BFC.

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1 I declare under the penalty of perjury under the laws of the United States that the
2 foregoing is true and correct. This declaration is executed this 25th day of October, 2019,
3 in Kihei, Hawaii.

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6 David Grossman
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Exhibit A

Big Fish Terms of Use

Last modified: March 24th, 2015

AGREEMENT AND SERVICES

PLEASE READ THESE TERMS OF USE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION IN THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION," WHICH REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND NOT A CLASS-WIDE OR CONSOLIDATED BASIS. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED AT THE END OF THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION."

BY ACCESSING OR USING ANY BIG FISH OFFERING, YOU AGREE TO BE BOUND BY THESE TERMS OF USE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO THESE TERMS OF USE IN THEIR ENTIRETY, DO NOT USE ANY BIG FISH OFFERINGS.

Big Fish Games, Inc. and/or its Affiliates provide access to the Big Fish Offerings subject to the conditions set forth in these Terms of Use. For purposes of these Terms of Use, the term "**Affiliates**" means, with respect to any party, any person or entity which controls, is controlled by, or is under common control with, such party, and the term "**Big Fish Offerings**" means the web sites of Big Fish, including www.bigfishgames.com, www.selfawaregames.com, any other sites on which these Terms of Use are posted, and any other Big Fish application, service or product licensed, downloaded or otherwise accessed by you through third party sites or sources, including the products and services available through any of the foregoing.

IF YOU ARE NOT CONSIDERED TO BE A RESIDENT OF THE EUROPEAN UNION ON THE BASIS OF THE INFORMATION THAT YOU PROVIDE TO US, THESE TERMS OF USE ARE ENTERED INTO BETWEEN YOU AND BIG FISH GAMES, INC.

IF YOU ARE CONSIDERED TO BE A RESIDENT OF THE EUROPEAN UNION ON THE BASIS OF THE INFORMATION THAT YOU PROVIDE TO US, THESE TERMS OF USE ARE ENTERED INTO BETWEEN YOU AND BIG FISH GAMES LUXEMBOURG S.A.R.L, (REGISTRATION NO. B 163052), WHICH HAS ITS REGISTERED OFFICE AT 46a, AVENUE J.F. KENNEDY, L-1855, LUXEMBOURG CITY, GRAND-DUCHY OF LUXEMBOURG.

THE TERM "**BIG FISH**" MEANS EITHER BIG FISH GAMES, INC. OR BIG FISH GAMES LUXEMBOURG S.A.R.L., DEPENDING ON YOUR COUNTRY OF RESIDENCE AS DESCRIBED ABOVE, AND IN EACH CASE ALONG WITH ITS AFFILIATES. Your use of the Big Fish Offerings constitutes your express acceptance without reservation of these Terms of Use.

Use of the Big Fish Offerings is also governed by our [Privacy Policy](#) and any other terms of use applicable to services you register to use within a Big Fish Offering, including any amendments or updates thereto.

Use of the Big Fish Software, as hereafter defined, is governed by the [Big Fish Games, Inc. End User license](#).

Without limiting the foregoing, each of your Big Fish Offering account(s) (each a "Big Fish account"), if applicable, and participation in any Big Fish Offerings are governed by these Terms of Use. The Big Fish Offerings are always evolving, so it is important that you periodically check these Terms of Use, as well as the specific rules for any games or activities in which you choose to participate, for updates. Big Fish reserves the right to change or modify these Terms of Use at any time and in our sole discretion. If Big Fish makes changes to these Terms of Use, we will provide notice of such changes, such as (by way of example only) by providing notice through the Big Fish Offerings or updating the "Last Modified" date at the top of these Terms of Use. If we revise these Terms of Use, such revision(s) will take effect immediately such notice. Your continued access or use of any Big Fish Offering constitutes your acceptance of the revised Terms of Use. We encourage you to frequently review these Terms of Use to ensure that you understand the terms and conditions that apply to your use of the Big Fish Offerings. If you do not agree to any of these Terms of Use, you should discontinue using or participating in any and all Big Fish Offerings. If there is a

conflict between these Terms of Use and any other rules or instructions posted within a Big Fish Offering, these Terms of Use will control.

ACCOUNT REGISTRATION

If you create a Big Fish account within any Big Fish Offering, you must provide truthful and accurate information to us in creating such account. If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access a Big Fish Offering, and refuse any and all current or future use of or access to any or all Big Fish Offerings (or any portion thereof).

Big Fish requires all users to be over the age of thirteen (13). If you are between the ages of thirteen (13) and eighteen (18), you may create a Big Fish account or use the Big Fish Offerings only under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use.

Big Fish reserves the right to limit the number of accounts a user can establish. This limit may change over time in our sole discretion.

You are solely responsible for all activity on any and all of your Big Fish account(s) and for the security of your computer system. You should not reveal your username or password to any other person. Big Fish will not ask you to reveal your password. If you forget your password, you can request to have a new password sent to your registered e-mail address. You agree to indemnify and hold Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers harmless for any improper or illegal use of any of your Big Fish account(s). This includes illegal or improper use by someone to whom you have given permission to use your Big Fish account(s) or whom you have negligently allowed to access your Big Fish account(s). Big Fish reserves the right to terminate your Big Fish account(s) if any activity that occurs with respect to such account(s) violates these Terms of Use.

ELECTRONIC COMMUNICATIONS

When you access a Big Fish Offering, send e-mails or electronically chat with Big Fish, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices in the Big Fish Offerings. You agree that all agreements, notices, disclosures and other communications that Big Fish provides to you electronically satisfy any legal requirement that such communications be in writing.

VIRTUAL ITEMS

Certain Big Fish Offerings may provide you with the opportunity to license a variety of virtual items such as virtual currency, virtual goods, additional levels and content packs ("virtual items") that can be used while playing the Big Fish Offering. You may be required to pay a fee to obtain virtual items. When you use virtual items within a Big Fish Offering, any virtual items that you have purchased will be deemed used before any virtual items that you have earned.

You have no property interest in any virtual items. Any purchase of virtual items, and virtual items accumulated through any applicable Big Fish Offering membership benefits, are purchases of a limited, non-transferable, revocable license to use those virtual items within the applicable Big Fish Offering. Virtual items may not be transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service. Virtual Items may not be purchased or sold from any individual or other company via cash, barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or use products or services other than within the applicable Big Fish Offering. Virtual items cannot be refunded or exchanged for cash or any other tangible value.

Big Fish may manage, regulate, control, modify or eliminate your virtual items in our sole discretion, and Big Fish will have no liability to you or anyone for exercising those rights. In addition, all virtual items are unconditionally forfeited if your Big Fish Offering account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering or any portion or feature of any Big Fish Offering.

Big Fish has no liability for hacking or loss of your virtual items. Big Fish has no obligation to, and will not, reimburse you for any virtual items lost due to your violation of these Terms of Use. Big Fish reserves the right, without prior notification, to limit the order quantity on any virtual items and/or to refuse to provide you with any virtual items. Price and availability of virtual items are subject to change without notice.

SOCIAL NETWORK SITES

If you access a Big Fish Offering via a third party social networking site (a "**Social Game**"), you should be aware that Social Games are only available to individuals who have registered with the social networking site through which s/he accesses Social Games. You agree that your social networking site account information is accurate, current and complete.

If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access Social Games and refuse any and all current or future use of or access to Social Games (or any portion thereof).

REVIEWS, COMMUNICATIONS AND SUBMISSIONS

Generally

Without limiting the scope of these Terms of Use, you agree to comply with our [Forum FAQ](#) and [Review Guidelines](#) when you submit reviews, forum posts and other content via any Big Fish Offering. Inappropriate, obscene, defamatory, offensive language, crude or explicit sexual content, discussions of any matters which are explicitly or by inference illegal in any way, discussions of illegal or any other drugs, and racially and ethnically offensive speech are examples of unsuitable content that are not permitted within the Big Fish Offerings. Content standards may vary depending on where you are within a Big Fish Offering and the expectations of the relevant game community. Some game play may involve use of stronger language than others, including mild expletives. You should always use your best and most respectful and conservative judgment in interacting as part of any game play, and submitting any content, such as a review or post to any forums or message boards, within a Big Fish Offering.

We expressly reserve the right, but have no obligation, to: (a) monitor any communications within the Big Fish Offerings, including, without limitation, to ensure that appropriate standards of online conduct are being observed, and (b) immediately or at any time remove any content that we deem objectionable or unsuitable in our sole discretion. Big Fish does not endorse, approve, or prescreen any content that you or other users post or communicate on or through any Big Fish Offerings. Big Fish does not assume any responsibility or liability for any content that is generated, posted or communicated by any user on or through the Big Fish Offerings. You agree to indemnify Big Fish and each of their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from any liability or damages arising out of or resulting from any content you post or communicate on or through the Big Fish Offerings.

Without limiting the generality of these policies and standards, the following actions are examples of behavior that violate these Terms of Use and may result in any or all of your Big Fish account(s) being immediately suspended or terminated:

- Posting, transmitting, promoting, or distributing any content that is illegal
- Harassing or threatening any other user of a Big Fish Offering or any employee or contractor of Big Fish
- Impersonating another person, indicating that you are a Big Fish employee or a representative of Big Fish (if you are not), or attempting to mislead users by indicating that you represent Big Fish in any way
- Attempting to obtain a password, other account information, or other private information from any other user of a Big Fish Offering
- Uploading any software, files, photos, images or any other content to a Big Fish Offering that you do not own or have the legal right to freely distribute, or that contain a virus or corrupted data, or any other malicious or invasive code or program

- Posting messages for any purpose other than personal communication, including without limitation advertising, promotional materials, chain letters, pyramid schemes, political campaigning, soliciting funds, mass mailings and sending "spam", or making any commercial use of any Big Fish Offering.
- Disrupting the normal flow of dialogue, or otherwise acting in a manner that negatively affects or disrupts other users.
- Improperly using any game support functions or complaint buttons, or making false complaints or other reports to Big Fish representatives.
- Posting or communicating any player's real-world personal information within a Big Fish Offering or by or through a Big Fish Offering or any related bulletin board.
- Uploading or transmitting, or attempting to upload or transmit, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, gifs, 1x1 pixels, web bugs, and other similar devices.
- Using or launching any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses a Big Fish Offering, or using or launching any unauthorized script or other software.
- Using a false e-mail address or otherwise disguising the source of any content that you submit within a Big Fish Offering, or using tools which anonymize your internet protocol address.
- Interfering or circumventing any Big Fish Offering security feature or any feature that restricts or enforces limitations on use of or access to a Big Fish Offering.
- Attempting to sell any part of a Big Fish Offering, including, without limitation, any virtual items (if applicable), Big Fish accounts and access to them in exchange for real currency or items of monetary or other value.
- Engaging in cheating or any other activity that Big Fish deems to be in conflict with the spirit of a Big Fish Offering.

Public Nature of Communications

You acknowledge and agree that your submitted content, including your reviews and your communications with other users via online messaging, private messaging, forums or bulletin boards, and any other similar types of communications and submissions on or through any Big Fish Offering, are non-confidential, public communications, and you have no expectation of privacy concerning your use of or participation in any Big Fish Offerings (other than with respect to the information you provide to us in establishing your Big Fish account(s), if applicable). You acknowledge that personal information that you communicate publicly within any Big Fish Offering may be seen and used by others and may result in unsolicited communications. Big Fish is not liable for any information that you choose to submit or communicate to other users on or through any Big Fish Offerings, or for the actions of any other users of any Big Fish Offering.

You represent and warrant that you have all necessary rights in and to any materials that you post within any Big Fish Offering, that such materials do not infringe any proprietary or other rights of third parties, that all such content is accurate and will not cause injury to any person or entity, and that you will indemnify Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers for all claims resulting from your submitted and posted content. If any such materials incorporate the name, voice, likeness and/or image of any individual, you represent and warrant that you have the right to grant Big Fish permission to use any such name, voice, likeness and/or image of such individual appearing in the materials you post throughout the world in perpetuity. Once you post or communicate any content or materials on or through a Big Fish Offering, you expressly grant Big Fish the complete, worldwide, fully sublicenseable and irrevocable right to quote, re-post, use, reproduce, modify, adapt, publish, translate, create derivative works from, display, distribute, transmit, and broadcast such content or materials, including without limitation the name you submit in connection with such content or materials, in any form, with or without attribution to you, and without any notice or compensation to you of any kind. We reserve the right to immediately remove any content that may be considered, in our sole discretion, in violation of the rights of any third party.

Commercial Activity and Unsolicited E-mail

You may not use any portion of the Big Fish Offerings to collect information, including login names, about other users, and use of such information to send unsolicited e-mail or for any other purpose is strictly prohibited. You may not

advertise any goods or services on any Big Fish Offerings, or otherwise exploit your participation on or through any Big Fish Offerings for any commercial purpose.

Customer Reviews

You may submit reviews of certain Big Fish Offerings. Use of the reviews feature is for your personal, non-commercial use and is at your own option and risk, and you must comply with the policies set forth in these Terms of Use and the [Review Guidelines](#).

When you post a review, we will display your rating of the Big Fish Offering, along with your user name and certain other information you may provide, such as your city and state location, skill level, favorite game and favorite genres. By submitting a review, you are consenting to the release of all information that you provide in that review to a public forum. If you do not want any such information to be shared in a public forum, do not use the review feature.

BIG FISH SOFTWARE

We may require that you download certain software from Big Fish, its principals or its licensors onto your computer ("**Big Fish Software**"). Subject to your compliance with these Terms of Use, Big Fish grants to you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Big Fish Software to participate in the Big Fish Offerings. The Big Fish Software is for your personal use, and may not be reproduced, duplicated, copied, resold, sublicensed, or otherwise used in whole or in part by you for commercial purposes. You may not modify, translate, reverse-engineer, reverse-compile or decompile, disassemble or create derivative works from any of the Big Fish Software.

NEITHER BIG FISH GAMES, INC. NOR ITS LICENSORS NOR BIG FISH GAMES LUXEMBOURG S.A.R.L., IS LIABLE FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF ANY BIG FISH SOFTWARE (INCLUDING LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE), AND THE ENTIRE RISK OF USE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE, RESULTING FROM ANY USE OF THE BIG FISH SOFTWARE AND BIG FISH UNLIMITED, RESIDES WITH YOU.

THIRD PARTY LINKS and THIRD PARTY CONTENT AND SERVICES

Any and all software, content and services (including advertising) within a Big Fish Offering that are not owned by Big Fish are "**third party content and services**." Big Fish acts merely as an intermediary service provider of, and accepts no responsibility or liability for, third party content and services. In addition and without limiting the generality of the foregoing, certain Big Fish Offerings may include links to sites operated by third parties, including advertisers and other content providers. Those sites may collect data or solicit personal information from you. Big Fish does not control such sites, and is not responsible for their content, policies, or collection, use or disclosure of any information those sites may collect.

VIOLATION OF THESE TERMS OF USE

If you violate our Terms of Use, Big Fish reserves the right, in its sole discretion, to immediately terminate your participation in any or all Big Fish Offerings, including any and all Big Fish accounts you have established. You acknowledge that Big Fish is not required to notify you prior to terminating any such account.

TERMINATION OF ANY BIG FISH ACCOUNT

Big Fish and you each have the right to terminate or cancel any of your Big Fish account(s), if applicable, at any time for any reason. You understand and agree that cancellation of your Big Fish account(s) and/or ceasing use of any and all Big Fish Offerings are your sole right and remedy with respect to any dispute with Big Fish. This includes, but is not limited to, any dispute arising out of or directly or indirectly related to: (a) any provision contained in these Terms of Use or any other agreement between you and Big Fish, including, without limitation, the [Privacy Policy](#), or Big Fish's enforcement or application of these Terms of Use or any other such agreement, including, without limitation, the [Privacy Policy](#), (b) the content available on or through the Big Fish Offerings, or any change in or to such content, (c) your ability to access and/or use any Big Fish Offerings, or (d) the amount or type of any fees,

surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods, in each case imposed or implemented by Big Fish on or through any Big Fish Offering.

Big Fish reserves the right to collect fees, surcharges or costs incurred before you cancel your Big Fish account(s) or a particular subscription. In the event that your Big Fish account or a particular subscription is terminated or cancelled, no refund will be granted, no online time or other credits (e.g., points in an online game) will be credited to you or converted to cash or other form of reimbursement, and you will have no further access to your account or anything associated with it (such as points, tokens or in-game items). Any delinquent or unpaid accounts must be settled before Big Fish may allow you to create any new or additional accounts. All virtual items are unconditionally forfeited if your Big Fish account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering that includes virtual items.

Without limiting the foregoing provisions, if you violate these Terms of Use, Big Fish may issue you a warning regarding the violation, or, in Big Fish's sole discretion, immediately terminate any and all Big Fish accounts that you have established with any Big Fish Offering, with or without notice.

INTELLECTUAL PROPERTY RIGHTS

The names and logos, and other graphics, logos, icons, and service names associated with the Big Fish Offerings are trademarks, registered trademarks or trade dress of Big Fish or its licensors or principals in the United States and/or other countries. Big Fish's trademarks and trade dress may not be used in connection with any product or service that is not owned or operated by or on behalf of Big Fish, or in any manner that is likely to cause confusion among consumers or that disparages or discredits Big Fish or any Big Fish Offering. The compilation of all content on the Big Fish Offerings is the exclusive property of Big Fish and is protected by United States and international copyright laws. You may not use, copy, transmit, modify, distribute, or create any derivative works from any content from the Big Fish Offerings unless we have expressly authorized you to do so in writing. All other trademarks not owned by Big Fish that appear on the Big Fish Offerings are the property of their respective owners, who may or may not be affiliated with or connected to Big Fish. If you fail to adhere to these Terms of Use, other content owners may take criminal or civil action against you. In the event legal action is taken against you for your acts and/or omissions with regard to any content on the Big Fish Offerings, you agree to indemnify and hold harmless Big Fish and its employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers.

LIMITATIONS ON WARRANTIES AND LIABILITY

YOU EXPRESSLY AGREE THAT THE USE OF ANY BIG FISH OFFERING, BIG FISH SOFTWARE AND THE INTERNET IS AT YOUR SOLE RISK. ALL BIG FISH OFFERINGS AND BIG FISH SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BIG FISH DOES NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE BIG FISH OFFERINGS OR BIG FISH SOFTWARE AT ANY PARTICULAR TIMES OR LOCATIONS, OR THAT THE BIG FISH OFFERINGS, BIG FISH SOFTWARE, NEWSLETTERS, E-MAILS OR OTHER COMMUNICATIONS SENT FROM BIG FISH ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BIG FISH IS TO STOP USING THE BIG FISH OFFERINGS AND BIG FISH SOFTWARE, AND TO CANCEL ANY AND ALL OF YOUR BIG FISH ACCOUNTS, IF APPLICABLE. YOU ACKNOWLEDGE AND AGREE THAT BIG FISH IS NOT LIABLE FOR ANY ACT OR FAILURE TO ACT ON ITS OWN PART, OR FOR ANY CONDUCT OF, OR COMMUNICATION OR CONTENT POSTED WITHIN A BIG FISH OFFERING BY, ANY BIG FISH OFFERING USER. IN NO EVENT SHALL BIG FISH'S OR ITS EMPLOYEES', CONTRACTORS', OFFICERS', DIRECTORS' OR SHAREHOLDERS' LIABILITY TO YOU EXCEED THE AMOUNT THAT YOU PAID TO BIG FISH FOR YOUR PARTICIPATION IN ANY BIG FISH OFFERING. IN NO CASE SHALL BIG FISH OR ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS OR SHAREHOLDERS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY BIG FISH OFFERING OR BIG FISH

SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT BIG FISH IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIG FISH LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF BIG FISH OFFERINGS AND OPERATORS OF SOCIAL NETWORKING AND OTHER EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING BIG FISH OFFERINGS AND BIG FISH SOFTWARE, SOCIAL NETWORKING SITES AND OTHER EXTERNAL SITES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

INDEMNIFICATION

You agree to defend, indemnify and hold harmless Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from and against any and all liabilities, claims and expenses, including attorneys' fees, that arise from a breach of these Terms of Use for which you are responsible or in connection with your transmission of any content to, on or through any Big Fish Offering. Without limiting your indemnification obligations described herein, Big Fish reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

IMPORT TAXES AND FEES

When you buy physical goods (e.g. CD-ROM) through any Big Fish Offering for delivery outside the United States, you are considered an importer and, as between you and Big Fish, you will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and you must comply with all laws and regulations of the country in which you are receiving the goods. Your privacy is important to us and we know that you care about how information about your order is used and shared. We would like our international customers and customers dispatching products internationally to be aware that cross-border deliveries are subject to opening and inspection by customs authorities.

EXPORT CONTROL LAWS

Certain Big Fish Offerings may be subject to United States and international export controls. By accessing Big Fish Offerings, you warrant that you are not located in any country, or exporting any Big Fish Offerings, to any person or place to which the United States, European Union or any other jurisdiction has embargoed goods. You agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Big Fish Offerings that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

OTHER LEGAL TERMS

You agree that these Terms of Use are not intended to confer and do not confer any rights or remedies upon any third party. If any part of these Terms of Use are held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. If any provision of these Terms of Use is found to be illegal or unenforceable, these Terms of Use will be deemed modified to the extent necessary to make them legal and enforceable, and will remain, as modified, in full force and effect. These Terms of Use, including all terms and policies referenced herein, contain the entire understanding, and supersede all prior agreements, between you and Big Fish relating to this subject matter, and cannot be changed or terminated orally.

PRIVACY

Big Fish respects the privacy of Big Fish Offerings users. Please review our [Privacy Policy](#), which also governs your access to and use of the Big Fish Offerings, to understand our policies and practices with respect your personal information.

APPLICABLE LAW, JURISDICTION, AND VENUE

These Terms of Use and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Washington, exclusive of conflict or choice of law rules.

The parties acknowledge that these Terms of Use evidence a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted under these Terms of Use shall be governed by the Federal Arbitration Act (9 U.S.C., §§ 1-16).

You and Big Fish irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in King County, Washington, for all disputes arising out of or relating to these Terms of Use, the subject matter of these Terms of Use, or your access to and use of any Big Fish Offering, that are heard in court (not arbitration).

DISPUTE RESOLUTION BY BINDING ARBITRATION

PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION CAREFULLY, BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH BIG FISH AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.

THIS PROVISION PRECLUDES YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH. IT ALSO PRECLUDES YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH BY SOMEONE ELSE. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE AND YOU SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED IN THIS AGREEMENT, AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS REGARDING THE CONSEQUENCES OF YOUR DECISION. YOU MAY OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS BELOW.

Scope of Arbitration Provision. You and Big Fish agree that any dispute, claim or controversy arising out of or relating to your access to or use of any Big Fish Offering or to these Terms of Use (including without limitation any dispute concerning the breach, enforcement, construction, validity, interpretation, enforceability, or arbitrability of these Terms of Use) (a "**Dispute**"), shall be determined by arbitration, except that you and Big Fish are NOT required to arbitrate any Dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

Location of Arbitration and Applicable Rules. You and Big Fish agree that such arbitration shall occur in King County, Washington. You may request to appear in such proceedings telephonically. You and Big Fish agree that such arbitration shall be conducted by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by these Terms of Use.

Authority of Arbitrator. With the exception of class procedures and remedies as discussed below under "Waiver of Class Relief," the arbitrator shall have the authority to grant any remedy that would otherwise be available in court.

Confidentiality. You and Big Fish shall maintain the confidential nature of the arbitration proceedings and the arbitration award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

Allocation of Arbitration Fees. If you assert a Dispute as a consumer, you will only be required to pay arbitration fees of \$250 of the fees charged by JAMS in connection with any arbitration under this section, and Big Fish will bear all other costs charged by JAMS or the arbitrator, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services. You will still be responsible for paying your own attorneys' fees.

WAIVER OF CLASS RELIEF. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AGREE THAT YOU AND BIG FISH WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING. YOU AND BIG FISH ARE EACH WAIVING RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Procedure to Opt Out of Arbitration Provision. You may opt out of this arbitration provision only by written Notice via U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.) to Big Fish, Attn: Legal Department, at 333 Elliott Avenue West, Suite 200, Seattle, WA, 98119. **You must send such Notice within thirty (30) days of your acceptance of these Terms of Use.** You must sign and date the Notice, and include in it your name, address, and a clear statement that you do not wish to resolve disputes with Big Fish through arbitration. If you do not follow this procedure by your thirty (30) day deadline to do so, then you and Big Fish shall both be bound by the terms of this section entitled Dispute Resolution by Binding Arbitration.

If any portion of this section entitled "Dispute Resolution by Binding Arbitration" is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

STATUTE OF LIMITATIONS

You and Big Fish agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of a Big Fish Offering, these Terms of Use or the [Privacy Policy](#), must be filed within ONE (1) YEAR after such claim or cause of action arose, and is thereafter forever barred.

SEVERABILITY

If any part of these Terms of Use is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

CONTACT US

Big Fish Games, Inc.
Attn: Legal Department
333 Elliott Avenue West, Suite 200
Seattle, Washington 98119
USA

Big Fish Games Luxembourg S.A.R.L.
46a, Avenue J.F. Kennedy
L-1855 Luxembourg City
Grand-Duché de Luxembourg

DIGITAL MILLENNIUM COPYRIGHT ACT

The Digital Millennium Copyright Act provides recourse to copyright owners who believe that their rights under the United States Copyright Act have been infringed by acts of third parties over the Internet. If you believe that your copyrighted work has been copied without your authorization and is available on or in a Big Fish Offering in a way that may constitute copyright infringement, you may provide notice of your claim to Big Fish's Designated Agent listed below. For your notice to be effective, it must include the following information:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) A description of the copyrighted work that you claim has been infringed upon;
- (iii) A description of where the material that you claim is infringing is located within the Big Fish Offering;
- (iv) Information reasonably sufficient to permit Big Fish to contact you, such as address, telephone number, and, if available, an e-mail address at which you may be contacted;

(v) A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and

(vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

(vii) Big Fish's Designated Agent is:

Big Fish Games, Inc.
Attn: Legal Department
333 Elliott Avenue West, Suite 200
Seattle, Washington 98119
USA

Exhibit B

Big Fish Terms of Use

Last modified: November 30, 2017

AGREEMENT AND SERVICES

PLEASE READ THESE TERMS OF USE CAREFULLY, INCLUDING THE MANDATORY ARBITRATION PROVISION IN THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION," WHICH REQUIRES THAT DISPUTES ARE RESOLVED BY FINAL AND BINDING ARBITRATION ON AN INDIVIDUAL AND NOT A CLASS-WIDE OR CONSOLIDATED BASIS. IF YOU DO NOT WISH TO BE SUBJECT TO ARBITRATION, YOU MAY OPT OUT OF THE ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS PROVIDED AT THE END OF THE SECTION TITLED "DISPUTE RESOLUTION BY BINDING ARBITRATION."

BY ACCESSING OR USING ANY BIG FISH OFFERING, YOU AGREE TO BE BOUND BY THESE TERMS OF USE AND ALL TERMS INCORPORATED BY REFERENCE. IF YOU DO NOT AGREE TO THESE TERMS OF USE IN THEIR ENTIRETY, DO NOT USE ANY BIG FISH OFFERINGS.

Big Fish Games, Inc. and/or its Affiliates provide access to the Big Fish Offerings subject to the conditions set forth in these Terms of Use. For purposes of these Terms of Use, the term "**Affiliates**" means, with respect to any party, any person or entity which controls, is controlled by, or is under common control with, such party, and the term "**Big Fish Offerings**" means the web sites of Big Fish, including www.bigfishgames.com, any other sites on which these Terms of Use are posted, and any other Big Fish application, service or product licensed, downloaded or otherwise accessed by you through third party sites or sources, including the products and services available through any of the foregoing.

THESE TERMS OF USE ARE ENTERED INTO BETWEEN YOU AND BIG FISH GAMES, INC. THE TERM "**BIG FISH**" MEANS BIG FISH GAMES, INC. ALONG WITH ITS AFFILIATES. Your use of the Big Fish Offerings constitutes your express acceptance without reservation of these Terms of Use.

Use of the Big Fish Offerings is also governed by our [Privacy Policy](#) and any other terms of use applicable to services you register to use within a Big Fish Offering, including any amendments or updates thereto.

Use of the Big Fish Software, as hereafter defined, is governed by the [Big Fish Games, Inc. End User license](#).

Without limiting the foregoing, each of your Big Fish Offering account(s) (each a "Big Fish account"), if applicable, and participation in any Big Fish Offerings are governed by these Terms of Use. The Big Fish Offerings are always evolving, so it is important that you periodically check these Terms of Use, as well as the specific rules for any games or activities in which you

choose to participate, for updates. Big Fish reserves the right to change or modify these Terms of Use at any time and in our sole discretion. If Big Fish makes changes to these Terms of Use, we will provide notice of such changes, such as (by way of example only) by providing notice through the Big Fish Offerings or updating the "Last Modified" date at the top of these Terms of Use. If we revise these Terms of Use, such revision(s) will take effect immediately such notice. Your continued access or use of any Big Fish Offering constitutes your acceptance of the revised Terms of Use. We encourage you to frequently review these Terms of Use to ensure that you understand the terms and conditions that apply to your use of the Big Fish Offerings. If you do not agree to any of these Terms of Use, you should discontinue using or participating in any and all Big Fish Offerings. If there is a conflict between these Terms of Use and any other rules or instructions posted within a Big Fish Offering, these Terms of Use will control.

ACCOUNT REGISTRATION

If you create a Big Fish account within any Big Fish Offering, you must provide truthful and accurate information to us in creating such account. If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access a Big Fish Offering, and refuse any and all current or future use of or access to any or all Big Fish Offerings (or any portion thereof).

Big Fish requires all users to be over the age of thirteen (13). If you are between the ages of thirteen (13) and eighteen (18), you may create a Big Fish account or use the Big Fish Offerings only under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use.

Big Fish reserves the right to limit the number of accounts a user can establish. This limit may change over time in our sole discretion.

You are solely responsible for all activity on any and all of your Big Fish account(s) and for the security of your computer system. You should not reveal your username or password to any other person. Big Fish will not ask you to reveal your password. If you forget your password, you can request to have a new password sent to your registered e-mail address. You agree to indemnify and hold Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers harmless for any improper or illegal use of any of your Big Fish account(s). This includes illegal or improper use by someone to whom you have given permission to use your Big Fish account(s) or whom you have negligently allowed to access your Big Fish account(s). Big Fish reserves the right to terminate your Big Fish account(s) if any activity that occurs with respect to such account(s) violates these Terms of Use.

ELECTRONIC COMMUNICATIONS

When you access a Big Fish Offering, send e-mails or electronically chat with Big Fish, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices in the Big Fish

Offerings. You agree that all agreements, notices, disclosures and other communications that Big Fish provides to you electronically satisfy any legal requirement that such communications be in writing.

VIRTUAL ITEMS

Certain Big Fish Offerings may provide you with the opportunity to license a variety of virtual items such as virtual currency, virtual goods, additional levels and content packs ("virtual items") that can be used while playing the Big Fish Offering. You may be required to pay a fee to obtain virtual items. When you use virtual items within a Big Fish Offering, any virtual items that you have purchased will be deemed used before any virtual items that you have earned.

You have no property interest in any virtual items. Any purchase of virtual items, and virtual items accumulated through any applicable Big Fish Offering membership benefits, are purchases of a limited, non-transferable, revocable license to use those virtual items within the applicable Big Fish Offering. Virtual items may not be transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service. Virtual Items may not be purchased or sold from any individual or other company via cash, barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or use products or services other than within the applicable Big Fish Offering. Virtual items cannot be refunded or exchanged for cash or any other tangible value.

Big Fish may manage, regulate, control, modify or eliminate your virtual items in our sole discretion, and Big Fish will have no liability to you or anyone for exercising those rights. In addition, all virtual items are unconditionally forfeited if your Big Fish Offering account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering or any portion or feature of any Big Fish Offering.

Big Fish has no liability for hacking or loss of your virtual items. Big Fish has no obligation to, and will not, reimburse you for any virtual items lost due to your violation of these Terms of Use. Big Fish reserves the right, without prior notification, to limit the order quantity on any virtual items and/or to refuse to provide you with any virtual items. Price and availability of virtual items are subject to change without notice.

SOCIAL NETWORK SITES

If you access a Big Fish Offering via a third party social networking site (a "**Social Game**"), you should be aware that Social Games are only available to individuals who have registered with the social networking site through which s/he accesses Social Games. You agree that your social networking site account information is accurate, current and complete.

If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access Social Games and refuse any and all current or future use of or access to Social Games (or any portion thereof).

REVIEWS, COMMUNICATIONS AND SUBMISSIONS

Generally

Without limiting the scope of these Terms of Use, you agree to comply with our [Forum FAQ](#) and [Review Guidelines](#) when you submit reviews, forum posts and other content via any Big Fish Offering. Inappropriate, obscene, defamatory, offensive language, crude or explicit sexual content, discussions of any matters which are explicitly or by inference illegal in any way, discussions of illegal or any other drugs, and racially and ethnically offensive speech are examples of unsuitable content that are not permitted within the Big Fish Offerings. Content standards may vary depending on where you are within a Big Fish Offering and the expectations of the relevant game community. Some game play may involve use of stronger language than others, including mild expletives. You should always use your best and most respectful and conservative judgment in interacting as part of any game play, and submitting any content, such as a review or post to any forums or message boards, within a Big Fish Offering.

We expressly reserve the right, but have no obligation, to: (a) monitor any communications within the Big Fish Offerings, including, without limitation, to ensure that appropriate standards of online conduct are being observed, and (b) immediately or at any time remove any content that we deem objectionable or unsuitable in our sole discretion. Big Fish does not endorse, approve, or prescreen any content that you or other users post or communicate on or through any Big Fish Offerings. Big Fish does not assume any responsibility or liability for any content that is generated, posted or communicated by any user on or through the Big Fish Offerings. You agree to indemnify Big Fish and each of their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from any liability or damages arising out of or resulting from any content you post or communicate on or through the Big Fish Offerings.

Without limiting the generality of these policies and standards, the following actions are examples of behavior that violate these Terms of Use and may result in any or all of your Big Fish account(s) being immediately suspended or terminated:

- Posting, transmitting, promoting, or distributing any content that is illegal
- Harassing or threatening any other user of a Big Fish Offering or any employee or contractor of Big Fish
- Impersonating another person, indicating that you are a Big Fish employee or a representative of Big Fish (if you are not), or attempting to mislead users by indicating that you represent Big Fish in any way
- Attempting to obtain a password, other account information, or other private information from any other user of a Big Fish Offering
- Uploading any software, files, photos, images or any other content to a Big Fish Offering that you do not own or have the legal right to freely distribute, or that contain a virus or corrupted data, or any other malicious or invasive code or program
- Posting messages for any purpose other than personal communication, including without limitation advertising, promotional materials, chain letters, pyramid schemes, political

campaigning, soliciting funds, mass mailings and sending "spam", or making any commercial use of any Big Fish Offering.

- Disrupting the normal flow of dialogue, or otherwise acting in a manner that negatively affects or disrupts other users.
- Improperly using any game support functions or complaint buttons, or making false complaints or other reports to Big Fish representatives.
- Posting or communicating any player's real-world personal information within a Big Fish Offering or by or through a Big Fish Offering or any related bulletin board.
- Uploading or transmitting, or attempting to upload or transmit, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, gifs, 1x1 pixels, web bugs, and other similar devices.
- Using or launching any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses a Big Fish Offering, or using or launching any unauthorized script or other software.
- Using a false e-mail address or otherwise disguising the source of any content that you submit within a Big Fish Offering, or using tools which anonymize your internet protocol address.
- Interfering or circumventing any Big Fish Offering security feature or any feature that restricts or enforces limitations on use of or access to a Big Fish Offering.
- Attempting to sell any part of a Big Fish Offering, including, without limitation, any virtual items (if applicable), Big Fish accounts and access to them in exchange for real currency or items of monetary or other value.
- Engaging in cheating or any other activity that Big Fish deems to be in conflict with the spirit of a Big Fish Offering.

Public Nature of Communications

You acknowledge and agree that your submitted content, including your reviews and your communications with other users via online messaging, private messaging, forums or bulletin boards, and any other similar types of communications and submissions on or through any Big Fish Offering, are non-confidential, public communications, and you have no expectation of privacy concerning your use of or participation in any Big Fish Offerings (other than with respect to the information you provide to us in establishing your Big Fish account(s), if applicable). You acknowledge that personal information that you communicate publicly within any Big Fish Offering may be seen and used by others and may result in unsolicited communications. Big Fish is not liable for any information that you choose to submit or communicate to other users on or through any Big Fish Offerings, or for the actions of any other users of any Big Fish Offering.

You represent and warrant that you have all necessary rights in and to any materials that you post within any Big Fish Offering, that such materials do not infringe any proprietary or other rights of third parties, that all such content is accurate and will not cause injury to any person or entity, and that you will indemnify Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers for all claims resulting from your submitted and posted content. If any such materials incorporate the name, voice, likeness and/or image of any individual, you represent and warrant that you have the right

to grant Big Fish permission to use any such name, voice, likeness and/or image of such individual appearing in the materials you post throughout the world in perpetuity. Once you post or communicate any content or materials on or through a Big Fish Offering, you expressly grant Big Fish the complete, worldwide, fully sublicensable and irrevocable right to quote, re-post, use, reproduce, modify, adapt, publish, translate, create derivative works from, display, distribute, transmit, and broadcast such content or materials, including without limitation the name you submit in connection with such content or materials, in any form, with or without attribution to you, and without any notice or compensation to you of any kind. We reserve the right to immediately remove any content that may be considered, in our sole discretion, in violation of the rights of any third party.

Commercial Activity and Unsolicited E-mail

You may not use any portion of the Big Fish Offerings to collect information, including login names, about other users, and use of such information to send unsolicited e-mail or for any other purpose is strictly prohibited. You may not advertise any goods or services on any Big Fish Offerings, or otherwise exploit your participation on or through any Big Fish Offerings for any commercial purpose.

Customer Reviews

You may submit reviews of certain Big Fish Offerings. Use of the reviews feature is for your personal, non-commercial use and is at your own option and risk, and you must comply with the policies set forth in these Terms of Use and the [Review Guidelines](#).

When you post a review, we will display your rating of the Big Fish Offering, along with your user name and certain other information you may provide, such as your city and state location, skill level, favorite game and favorite genres. By submitting a review, you are consenting to the release of all information that you provide in that review to a public forum. If you do not want any such information to be shared in a public forum, do not use the review feature.

BIG FISH SOFTWARE

We may require that you download certain software from Big Fish, its principals or its licensors onto your computer ("**Big Fish Software**"). Subject to your compliance with these Terms of Use, Big Fish grants to you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Big Fish Software to participate in the Big Fish Offerings. The Big Fish Software is for your personal use, and may not be reproduced, duplicated, copied, resold, sublicensed, or otherwise used in whole or in part by you for commercial purposes. You may not modify, translate, reverse-engineer, reverse-compile or decompile, disassemble or create derivative works from any of the Big Fish Software.

NEITHER BIG FISH GAMES, INC. NOR ITS LICENSORS IS LIABLE FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF ANY BIG FISH SOFTWARE (INCLUDING LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE), AND THE ENTIRE

RISK OF USE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE, RESULTING FROM ANY USE OF THE BIG FISH SOFTWARE, RESIDES WITH YOU.

THIRD PARTY LINKS and THIRD PARTY CONTENT AND SERVICES

Any and all software, content and services (including advertising) within a Big Fish Offering that are not owned by Big Fish are "**third party content and services**." Big Fish acts merely as an intermediary service provider of, and accepts no responsibility or liability for, third party content and services. In addition and without limiting the generality of the foregoing, certain Big Fish Offerings may include links to sites operated by third parties, including advertisers and other content providers. Those sites may collect data or solicit personal information from you. Big Fish does not control such sites, and is not responsible for their content, policies, or collection, use or disclosure of any information those sites may collect.

VIOLATION OF THESE TERMS OF USE

If you violate our Terms of Use, Big Fish reserves the right, in its sole discretion, to immediately terminate your participation in any or all Big Fish Offerings, including any and all Big Fish accounts you have established. You acknowledge that Big Fish is not required to notify you prior to terminating any such account.

TERMINATION OF ANY BIG FISH ACCOUNT

Big Fish and you each have the right to terminate or cancel any of your Big Fish account(s), if applicable, at any time for any reason. You understand and agree that cancellation of your Big Fish account(s) and/or ceasing use of any and all Big Fish Offerings are your sole right and remedy with respect to any dispute with Big Fish. This includes, but is not limited to, any dispute arising out of or directly or indirectly related to: (a) any provision contained in these Terms of Use or any other agreement between you and Big Fish, including, without limitation, the [Privacy Policy](#), or Big Fish's enforcement or application of these Terms of Use or any other such agreement, including, without limitation, the [Privacy Policy](#), (b) the content available on or through the Big Fish Offerings, or any change in or to such content, (c) your ability to access and/or use any Big Fish Offerings, or (d) the amount or type of any fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods, in each case imposed or implemented by Big Fish on or through any Big Fish Offering.

Big Fish reserves the right to collect fees, surcharges or costs incurred before you cancel your Big Fish account(s) or a particular subscription. In the event that your Big Fish account or a particular subscription is terminated or cancelled, no refund will be granted, no online time or other credits (e.g., points in an online game) will be credited to you or converted to cash or other form of reimbursement, and you will have no further access to your account or anything associated with it (such as points, tokens or in-game items). Any delinquent or unpaid accounts

must be settled before Big Fish may allow you to create any new or additional accounts. All virtual items are unconditionally forfeited if your Big Fish account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering that includes virtual items.

Without limiting the foregoing provisions, if you violate these Terms of Use, Big Fish may issue you a warning regarding the violation, or, in Big Fish's sole discretion, immediately terminate any and all Big Fish accounts that you have established with any Big Fish Offering, with or without notice.

INTELLECTUAL PROPERTY RIGHTS

The names and logos, and other graphics, logos, icons, and service names associated with the Big Fish Offerings are trademarks, registered trademarks or trade dress of Big Fish or its licensors or principals in the United States and/or other countries. Big Fish's trademarks and trade dress may not be used in connection with any product or service that is not owned or operated by or on behalf of Big Fish, or in any manner that is likely to cause confusion among consumers or that disparages or discredits Big Fish or any Big Fish Offering. The compilation of all content on the Big Fish Offerings is the exclusive property of Big Fish and is protected by United States and international copyright laws. You may not use, copy, transmit, modify, distribute, or create any derivative works from any content from the Big Fish Offerings unless we have expressly authorized you to do so in writing. All other trademarks not owned by Big Fish that appear on the Big Fish Offerings are the property of their respective owners, who may or may not be affiliated with or connected to Big Fish. If you fail to adhere to these Terms of Use, other content owners may take criminal or civil action against you. In the event legal action is taken against you for your acts and/or omissions with regard to any content on the Big Fish Offerings, you agree to indemnify and hold harmless Big Fish and its employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers.

LIMITATIONS ON WARRANTIES AND LIABILITY

YOU EXPRESSLY AGREE THAT THE USE OF ANY BIG FISH OFFERING, BIG FISH SOFTWARE AND THE INTERNET IS AT YOUR SOLE RISK. ALL BIG FISH OFFERINGS AND BIG FISH SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BIG FISH DOES NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE BIG FISH OFFERINGS OR BIG FISH SOFTWARE AT ANY PARTICULAR TIMES OR LOCATIONS, OR THAT THE BIG FISH OFFERINGS, BIG FISH SOFTWARE, NEWSLETTERS, E-MAILS OR OTHER COMMUNICATIONS SENT FROM BIG FISH ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BIG FISH IS TO STOP USING THE BIG FISH OFFERINGS AND BIG FISH SOFTWARE, AND TO CANCEL ANY AND ALL OF YOUR BIG FISH ACCOUNTS, IF APPLICABLE. YOU ACKNOWLEDGE AND AGREE THAT BIG FISH IS NOT LIABLE FOR ANY ACT OR FAILURE TO ACT ON ITS OWN PART, OR FOR ANY CONDUCT OF, OR COMMUNICATION OR CONTENT POSTED WITHIN A BIG FISH OFFERING BY, ANY BIG FISH OFFERING USER. IN NO EVENT SHALL BIG FISH'S OR ITS EMPLOYEES', CONTRACTORS', OFFICERS', DIRECTORS' OR SHAREHOLDERS' LIABILITY TO YOU EXCEED THE AMOUNT THAT YOU PAID TO BIG FISH FOR YOUR PARTICIPATION IN ANY BIG FISH OFFERING. IN NO CASE SHALL BIG FISH OR ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS OR SHAREHOLDERS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY BIG FISH OFFERING OR BIG FISH SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT BIG FISH IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIG FISH LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF BIG FISH OFFERINGS AND OPERATORS OF SOCIAL NETWORKING AND OTHER EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING BIG FISH OFFERINGS AND BIG FISH SOFTWARE, SOCIAL NETWORKING SITES AND OTHER EXTERNAL SITES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

INDEMNIFICATION

You agree to defend, indemnify and hold harmless Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from and against any and all liabilities, claims and expenses, including attorneys' fees, that arise from a breach of these Terms of Use for which you are responsible or in connection with your transmission of any content to, on or through any Big Fish Offering. Without limiting your indemnification obligations described herein, Big Fish reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

IMPORT TAXES AND FEES

When you buy physical goods (e.g. CD-ROM) through any Big Fish Offering for delivery outside the United States, you are considered an importer and, as between you and Big Fish, you will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and you must comply with all laws and regulations of the country in which you are receiving the goods. Your privacy is important to us and we know that you care about how information about your order is used and shared. We would like our

international customers and customers dispatching products internationally to be aware that cross-border deliveries are subject to opening and inspection by customs authorities.

EXPORT CONTROL LAWS

Certain Big Fish Offerings may be subject to United States and international export controls. By accessing Big Fish Offerings, you warrant that you are not located in any country, or exporting any Big Fish Offerings, to any person or place to which the United States, European Union or any other jurisdiction has embargoed goods. You agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Big Fish Offerings that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

OTHER LEGAL TERMS

You agree that these Terms of Use are not intended to confer and do not confer any rights or remedies upon any third party. If any part of these Terms of Use are held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. If any provision of these Terms of Use is found to be illegal or unenforceable, these Terms of Use will be deemed modified to the extent necessary to make them legal and enforceable, and will remain, as modified, in full force and effect. These Terms of Use, including all terms and policies referenced herein, contain the entire understanding, and supersede all prior agreements, between you and Big Fish relating to this subject matter, and cannot be changed or terminated orally.

PRIVACY

Big Fish respects the privacy of Big Fish Offerings users. Please review our [Privacy Policy](#), which also governs your access to and use of the Big Fish Offerings, to understand our policies and practices with respect your personal information.

APPLICABLE LAW, JURISDICTION, AND VENUE

These Terms of Use and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Washington, exclusive of conflict or choice of law rules.

The parties acknowledge that these Terms of Use evidence a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted under these Terms of Use shall be governed by the Federal Arbitration Act (9 U.S.C., §§ 1-16).

You and Big Fish irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in King County, Washington, for all disputes arising out of or relating to these Terms of Use, the subject matter of these Terms of Use, or your access to and use of any Big Fish Offering, that are heard in court (not arbitration).

DISPUTE RESOLUTION BY BINDING ARBITRATION

PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION CAREFULLY, BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH BIG FISH AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.

THIS PROVISION PRECLUDES YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH. IT ALSO PRECLUDES YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH BY SOMEONE ELSE. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE AND YOU SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED IN THIS AGREEMENT, AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS REGARDING THE CONSEQUENCES OF YOUR DECISION. YOU MAY OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS BELOW.

Scope of Arbitration Provision. You and Big Fish agree that any dispute, claim or controversy arising out of or relating to your access to or use of any Big Fish Offering or to these Terms of Use (including without limitation any dispute concerning the breach, enforcement, construction, validity, interpretation, enforceability, or arbitrability of these Terms of Use) (a "**Dispute**"), shall be determined by arbitration, except that you and Big Fish are NOT required to arbitrate any Dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

Location of Arbitration and Applicable Rules. You and Big Fish agree that such arbitration shall occur in King County, Washington. You may request to appear in such proceedings telephonically. You and Big Fish agree that such arbitration shall be conducted by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by these Terms of Use.

Authority of Arbitrator. With the exception of class procedures and remedies as discussed below under "Waiver of Class Relief," the arbitrator shall have the authority to grant any remedy that would otherwise be available in court.

Confidentiality. You and Big Fish shall maintain the confidential nature of the arbitration proceedings and the arbitration award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision

Allocation of Arbitration Fees. If you assert a Dispute as a consumer, you will only be required to pay arbitration fees of \$250 of the fees charged by JAMS in connection with any arbitration under this section, and Big Fish will bear all other costs charged by JAMS or the arbitrator, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services. You will still be responsible for paying your own attorneys' fees.

WAIVER OF CLASS RELIEF. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AGREE THAT YOU AND BIG FISH WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING. YOU AND BIG FISH ARE EACH WAIVING RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Procedure to Opt Out of Arbitration Provision. You may opt out of this arbitration provision only by written Notice via U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.) to Big Fish, Attn: Legal Department, at 333 Elliott Avenue West, Suite 200, Seattle, WA, 98119. **You must send such Notice within thirty (30) days of your acceptance of these Terms of Use.** You must sign and date the Notice, and include in it your name, address, and a clear statement that you do not wish to resolve disputes with Big Fish through arbitration. If you do not follow this procedure by your thirty (30) day deadline to do so, then you and Big Fish shall both be bound by the terms of this section entitled Dispute Resolution by Binding Arbitration.

If any portion of this section entitled "Dispute Resolution by Binding Arbitration" is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

STATUTE OF LIMITATIONS

You and Big Fish agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of a Big Fish Offering, these Terms of Use or the [Privacy Policy](#), must be filed within ONE (1) YEAR after such claim or cause of action arose, and is thereafter forever barred.

SEVERABILITY

If any part of these Terms of Use is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

CONTACT US

Big Fish Games, Inc.
Attn: Legal Department
333 Elliott Avenue West, Suite 200
Seattle, Washington 98119
USA

DIGITAL MILLENNIUM COPYRIGHT ACT

The Digital Millennium Copyright Act provides recourse to copyright owners who believe that their rights under the United States Copyright Act have been infringed by acts of third parties over the Internet. If you believe that your copyrighted work has been copied without your authorization and is available on or in a Big Fish Offering in a way that may constitute copyright infringement, you may provide notice of your claim to Big Fish's Designated Agent listed below. For your notice to be effective, it must include the following information:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) A description of the copyrighted work that you claim has been infringed upon;
- (iii) A description of where the material that you claim is infringing is located within the Big Fish Offering;
- (iv) Information reasonably sufficient to permit Big Fish to contact you, such as address, telephone number, and, if available, an e-mail address at which you may be contacted;
- (v) A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.
- (vii) Big Fish's Designated Agent is:

Big Fish Games, Inc.
Attn: Legal Department
333 Elliott Avenue West, Suite 200
Seattle, Washington 98119
USA

Exhibit C

Big Fish Terms of Use
Last modified: August 14, 2018

AGREEMENT AND SERVICES

Please read these Terms of Use carefully, including the mandatory arbitration provision in the section titled "Dispute Resolution by Binding Arbitration," which requires that disputes are resolved by final and binding arbitration on an individual and not a class-wide or consolidated basis. If you do not wish to be subject to arbitration, you may opt out of the arbitration provision by following the instructions provided at the end of the section titled "Dispute Resolution by Binding Arbitration".

By accessing or using any Big Fish Offering, you agree to be bound by these Terms of Use and all terms incorporated by reference. If you do not agree to these Terms of Use in their entirety, do not use any Big Fish Offerings.

You must be at least thirteen (13) years of age, or sixteen (16) years of age if you are located in the European Union, to use the Big Fish Offerings. If you are between the ages of thirteen (13) and eighteen (18) (or the age of legal majority where you live), you may create a Big Fish account or use the Big Fish Offerings only under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use. If you are a parent or legal guardian of a user under the age of eighteen (18) (or the age of legal majority where you live), you agree to be fully responsible for the acts or omissions of such user in relation to any Big Fish Offering.

Big Fish Games, Inc. and/or its Affiliates provide access to the Big Fish Offerings subject to the conditions set forth in these Terms of Use. For purposes of these Terms of Use, the term "Affiliates" means, with respect to any party, any person or entity which controls, is controlled by, or is under common control with, such party, and the term "Big Fish Offerings" means the web sites of Big Fish, including www.bigfishgames.com, any other sites on which these Terms of Use are posted, and any other Big Fish application, service or product licensed, downloaded or otherwise accessed by you through third party sites or sources, including the products and services available through any of the foregoing.

These Terms of Use are entered into between you and Big Fish Games, Inc. The term "Big Fish" means Big Fish Games, Inc. along with its Affiliates.

Use of the Big Fish Software, as hereafter defined, is governed by the Big Fish Games, Inc. End User license.

Without limiting the foregoing, each of your Big Fish Offering account(s) (each a "Big Fish account"), if applicable, and participation in any Big Fish Offerings are governed by these Terms of Use. The Big Fish Offerings are always evolving, so it is important that you periodically check these Terms of Use, as well as the specific rules for any games or activities in which you choose to participate, for updates. Big Fish reserves the right to change or modify these Terms of Use at any time and in our sole discretion. If Big Fish makes changes to these Terms of Use, we will provide notice of such changes, such as (by way of example only) by providing notice through the Big Fish Offerings or updating the "Last Modified" date at the top of these Terms of

Use. If we revise these Terms of Use, such revision(s) will take effect immediately such notice. Your continued access or use of any Big Fish Offering constitutes your acceptance of the revised Terms of Use. We encourage you to frequently review these Terms of Use to ensure that you understand the terms and conditions that apply to your use of the Big Fish Offerings. If you do not agree to any of these Terms of Use, you should discontinue using or participating in any and all Big Fish Offerings. If there is a conflict between these Terms of Use and any other rules or instructions posted within a Big Fish Offering, these Terms of Use will control.

ACCOUNT REGISTRATION

If you create a Big Fish account within any Big Fish Offering, you must provide truthful and accurate information to us in creating such account and promptly update this information if it changes. If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access a Big Fish Offering, and refuse any and all current or future use of or access to any or all Big Fish Offerings (or any portion thereof).

Big Fish reserves the right to limit the number of accounts a user can establish. This limit may change over time in our sole discretion.

You are solely responsible for all activity on any and all of your Big Fish account(s) and for the security of your computer system. You should not reveal your username or password to any other person. Big Fish will not ask you to reveal your password. If you forget your password, you can request to have a new password sent to your registered e-mail address. You agree to indemnify and hold Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers harmless for any improper or illegal use of any of your Big Fish account(s). This includes illegal or improper use by someone to whom you have given permission to use your Big Fish account(s) or whom you have negligently allowed to access your Big Fish account(s). Big Fish reserves the right to terminate your Big Fish account(s) if any activity that occurs with respect to such account(s) violates these Terms of Use.

ELECTRONIC COMMUNICATIONS

When you access a Big Fish Offering, send e-mails or electronically chat with Big Fish, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices in the Big Fish Offerings. You agree that all agreements, notices, disclosures and other communications that Big Fish provides to you electronically satisfy any legal requirement that such communications be in writing.

VIRTUAL ITEMS

Certain Big Fish Offerings may provide you with the opportunity to license a variety of virtual items such as virtual currency, virtual goods, additional levels and content packs ("virtual items") that can be used while playing the Big Fish Offering. You may be required to pay a fee to obtain virtual items. When you use virtual items within a Big Fish Offering, any virtual items that you have purchased will be deemed used before any virtual items that you have earned.

You have no property interest in any virtual items. Any purchase of virtual items, and virtual items accumulated through any applicable Big Fish Offering membership benefits, are purchases of a limited, non-transferable, revocable license to use those virtual items within the applicable Big Fish Offering. Virtual items may not be transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service. Virtual Items may not be purchased or sold from any individual or other company via cash, barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or use products or services other than within the applicable Big Fish Offering. Virtual items cannot be refunded or exchanged for cash or any other tangible value.

Big Fish may manage, regulate, control, modify or eliminate your virtual items in our sole discretion, and Big Fish will have no liability to you or anyone for exercising those rights. In addition, all virtual items are unconditionally forfeited if your Big Fish Offering account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering or any portion or feature of any Big Fish Offering.

Big Fish has no liability for hacking or loss of your virtual items. Big Fish has no obligation to, and will not, reimburse you for any virtual items lost due to your violation of these Terms of Use. Big Fish reserves the right, without prior notification, to limit the order quantity on any virtual items and/or to refuse to provide you with any virtual items. Price and availability of virtual items are subject to change without notice.

SOCIAL NETWORK SITES

If you access a Big Fish Offering via a third party social networking site (a "Social Game"), you should be aware that Social Games are only available to individuals who have registered with the social networking site through which s/he accesses Social Games. You agree that your social networking site account information is accurate, current and complete.

If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access Social Games and refuse any and all current or future use of or access to Social Games (or any portion thereof).

REVIEWS, COMMUNICATIONS AND SUBMISSIONS

Generally

Without limiting the scope of these Terms of Use, you agree to comply with our Forum FAQ and Review Guidelines when you submit reviews, forum posts and other content via any Big Fish Offering. Inappropriate, obscene, defamatory, offensive language, crude or explicit sexual content, discussions of any matters which are explicitly or by inference illegal in any way, discussions of illegal or any other drugs, and racially and ethnically offensive speech are examples of unsuitable content that are not permitted within the Big Fish Offerings. Content standards may vary depending on where you are within a Big Fish Offering and the expectations of the relevant game community. Some game play may involve use of stronger language than others, including mild expletives. You should always use your best and most respectful and conservative judgment in interacting as part of any game play, and submitting any content, such as a review or post to any forums or message boards, within a Big Fish Offering.

We expressly reserve the right, but have no obligation, to: (a) monitor any communications within the Big Fish Offerings, including, without limitation, to ensure that appropriate standards of online conduct are being observed, and (b) immediately or at any time remove any content that we deem objectionable or unsuitable in our sole discretion. Big Fish does not endorse, approve, or prescreen any content that you or other users post or communicate on or through any Big Fish Offerings. Big Fish does not assume any responsibility or liability for any content that is generated, posted or communicated by any user on or through the Big Fish Offerings. You agree to indemnify Big Fish and each of their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from any liability or damages arising out of or resulting from any content you post or communicate on or through the Big Fish Offerings.

Without limiting the generality of these policies and standards, the following actions are examples of behavior that violate these Terms of Use and may result in any or all of your Big Fish account(s) being immediately suspended or terminated:

Posting, transmitting, promoting, or distributing any content that is illegal
 Harassing or threatening any other user of a Big Fish Offering or any employee or contractor of Big Fish
 Impersonating another person, indicating that you are a Big Fish employee or a representative of Big Fish (if you are not), or attempting to mislead users by indicating that you represent Big Fish in any way
 Attempting to obtain a password, other account information, or other private information from any other user of a Big Fish Offering
 Uploading any software, files, photos, images or any other content to a Big Fish Offering that you do not own or have the legal right to freely distribute, or that contain a virus or corrupted data, or any other malicious or invasive code or program
 Posting messages for any purpose other than personal communication, including without limitation advertising, promotional materials, chain letters, pyramid schemes, political campaigning, soliciting funds, mass mailings and sending "spam", or making any commercial use of any Big Fish Offering
 Disrupting the normal flow of dialogue, or otherwise acting in a manner that negatively affects or disrupts other users.
 Improperly using any game support functions or complaint buttons, or making false complaints or other reports to Big Fish representatives.
 Posting or communicating any player's real-world personal information within a Big Fish Offering or by or through a Big Fish Offering or any related bulletin board.
 Uploading or transmitting, or attempting to upload or transmit, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, gifs, 1x1 pixels, web bugs, and other similar devices.
 Using or launching any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses a Big Fish Offering, or using or launching any unauthorized script or other software.
 Using a false e-mail address or otherwise disguising the source of any content that you submit within a Big Fish Offering, or using tools which anonymize your internet protocol address.

Interfering or circumventing any Big Fish Offering security feature or any feature that restricts or enforces limitations on use of or access to a Big Fish Offering.

Attempting to sell any part of a Big Fish Offering, including, without limitation, any virtual items (if applicable), Big Fish accounts and access to them in exchange for real currency or items of monetary or other value.

Engaging in cheating or any other activity that Big Fish deems to be in conflict with the spirit of a Big Fish Offering.

Public Nature of Communications

You acknowledge and agree that your submitted content, including your reviews and your communications with other users via online messaging, private messaging, forums or bulletin boards, and any other similar types of communications and submissions on or through any Big Fish Offering, are non-confidential, public communications, and you have no expectation of privacy concerning your use of or participation in any Big Fish Offerings (other than with respect to the information you provide to us in establishing your Big Fish account(s), if applicable). You acknowledge that personal information that you communicate publicly within any Big Fish Offering may be seen and used by others and may result in unsolicited communications. Big Fish is not liable for any information that you choose to submit or communicate to other users on or through any Big Fish Offerings, or for the actions of any other users of any Big Fish Offering.

You represent and warrant that you have all necessary rights in and to any materials that you post within any Big Fish Offering, that such materials do not infringe any proprietary or other rights of third parties, that all such content is accurate and will not cause injury to any person or entity, and that you will indemnify Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers for all claims resulting from your submitted and posted content. If any such materials incorporate the name, voice, likeness and/or image of any individual, you represent and warrant that you have the right to grant Big Fish permission to use any such name, voice, likeness and/or image of such individual appearing in the materials you post throughout the world in perpetuity. Once you post or communicate any content or materials on or through a Big Fish Offering, you expressly grant Big Fish the complete, worldwide, fully sublicenseable and irrevocable right to quote, re-post, use, reproduce, modify, adapt, publish, translate, create derivative works from, display, distribute, transmit, and broadcast such content or materials, including without limitation the name you submit in connection with such content or materials, in any form, with or without attribution to you, and without any notice or compensation to you of any kind. We reserve the right to immediately remove any content that may be considered, in our sole discretion, in violation of the rights of any third party.

Commercial Activity and Unsolicited E-mail

You may not use any portion of the Big Fish Offerings to collect information, including login names, about other users, and use of such information to send unsolicited e-mail or for any other purpose is strictly prohibited. You may not advertise any goods or services on any Big Fish Offerings, or otherwise exploit your participation on or through any Big Fish Offerings for any commercial purpose.

Customer Reviews

You may submit reviews of certain Big Fish Offerings. Use of the reviews feature is for your personal, non-commercial use and is at your own option and risk, and you must comply with the policies set forth in these Terms of Use and the Review Guidelines.

When you post a review, we will display your rating of the Big Fish Offering, along with your user name and certain other information you may provide, such as your city and state location, skill level, favorite game and favorite genres. By submitting a review, you are consenting to the release of all information that you provide in that review to a public forum. If you do not want any such information to be shared in a public forum, do not use the review feature.

BIG FISH SOFTWARE

We may require that you download certain software from Big Fish, its principals or its licensors onto your computer ("Big Fish Software"). Subject to your compliance with these Terms of Use, Big Fish grants to you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Big Fish Software to participate in the Big Fish Offerings. The Big Fish Software is for your personal use, and may not be reproduced, duplicated, copied, resold, sublicensed, or otherwise used in whole or in part by you for commercial purposes. You may not modify, translate, reverse-engineer, reverse-compile or decompile, disassemble or create derivative works from any of the Big Fish Software.

NEITHER BIG FISH GAMES, INC. NOR ITS LICENSORS IS LIABLE FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF ANY BIG FISH SOFTWARE (INCLUDING LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE), AND THE ENTIRE RISK OF USE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE, RESULTING FROM ANY USE OF THE BIG FISH SOFTWARE, RESIDES WITH YOU.

THIRD PARTY LINKS and THIRD PARTY CONTENT AND SERVICES

Any and all software, content and services (including advertising) within a Big Fish Offering that are not owned by Big Fish are "third party content and services." Big Fish acts merely as an intermediary service provider of, and accepts no responsibility or liability for, third party content and services. In addition and without limiting the generality of the foregoing, certain Big Fish Offerings may include links to sites operated by third parties, including advertisers and other content providers. Those sites may collect data or solicit personal information from you. Big Fish does not control such sites, and is not responsible for their content, policies, or collection, use or disclosure of any information those sites may collect.

VIOLATION OF THESE TERMS OF USE

If you violate our Terms of Use, Big Fish reserves the right, in its sole discretion, to immediately terminate your participation in any or all Big Fish Offerings, including any and all Big Fish accounts you have established. You acknowledge that Big Fish is not required to notify you prior to terminating any such account.

TERMINATION OF ANY BIG FISH ACCOUNT

Big Fish and you each have the right to terminate or cancel any of your Big Fish account(s), if applicable, at any time for any reason. You understand and agree that cancellation of your Big Fish account(s) and/or ceasing use of any and all Big Fish Offerings are your sole right and remedy with respect to any dispute with Big Fish. This includes, but is not limited to, any dispute arising out of or directly or indirectly related to: (a) any provision contained in or Big Fish's enforcement or application of these Terms of Use or any other agreement between you and Big Fish, (b) the content available on or through the Big Fish Offerings, or any change in or to such content, (c) your ability to access and/or use any Big Fish Offerings, or (d) the amount or type of any fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods, in each case imposed or implemented by Big Fish on or through any Big Fish Offering.

Big Fish reserves the right to collect fees, surcharges or costs incurred before you cancel your Big Fish account(s) or a particular subscription. In the event that your Big Fish account or a particular subscription is terminated or cancelled, no refund will be granted, no online time or other credits (e.g., points in an online game) will be credited to you or converted to cash or other form of reimbursement, and you will have no further access to your account or anything associated with it (such as points, tokens or in-game items). Any delinquent or unpaid accounts must be settled before Big Fish may allow you to create any new or additional accounts. All virtual items are unconditionally forfeited if your Big Fish account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering that includes virtual items.

Without limiting the foregoing provisions, if you violate these Terms of Use, Big Fish may issue you a warning regarding the violation, or, in Big Fish's sole discretion, immediately terminate any and all Big Fish accounts that you have established with any Big Fish Offering, with or without notice.

INTELLECTUAL PROPERTY RIGHTS

Big Fish Games, Inc. and the names and logos, our product or service names, our slogans and the look and feel of the Big Fish Offerings trademarks or trade dress of Big Fish and may not be copied, imitated, or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Big Fish Offerings are the property of their respective owners, who may or may not be affiliated with or connected to Big Fish. If you fail to adhere to these Terms of Use, other content owners may take criminal or civil action against you. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier or otherwise, does not constitute or imply endorsement, sponsorship or recommendation by us.

LIMITATIONS ON WARRANTIES AND LIABILITY

YOU EXPRESSLY AGREE THAT THE USE OF ANY BIG FISH OFFERING, BIG FISH SOFTWARE AND THE INTERNET IS AT YOUR SOLE RISK. ALL BIG FISH OFFERINGS AND BIG FISH SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH

WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BIG FISH DOES NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE BIG FISH OFFERINGS OR BIG FISH SOFTWARE AT ANY PARTICULAR TIMES OR LOCATIONS, OR THAT THE BIG FISH OFFERINGS, BIG FISH SOFTWARE, NEWSLETTERS, E-MAILS OR OTHER COMMUNICATIONS SENT FROM BIG FISH ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BIG FISH IS TO STOP USING THE BIG FISH OFFERINGS AND BIG FISH SOFTWARE, AND TO CANCEL ANY AND ALL OF YOUR BIG FISH ACCOUNTS, IF APPLICABLE. YOU ACKNOWLEDGE AND AGREE THAT BIG FISH IS NOT LIABLE FOR ANY ACT OR FAILURE TO ACT ON ITS OWN PART, OR FOR ANY CONDUCT OF, OR COMMUNICATION OR CONTENT POSTED WITHIN A BIG FISH OFFERING BY, ANY BIG FISH OFFERING USER. IN NO EVENT SHALL BIG FISH'S OR ITS EMPLOYEES', CONTRACTORS', OFFICERS', DIRECTORS' OR SHAREHOLDERS' LIABILITY TO YOU EXCEED THE AMOUNT THAT YOU PAID TO BIG FISH FOR YOUR PARTICIPATION IN ANY BIG FISH OFFERING. IN NO CASE SHALL BIG FISH OR ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS OR SHAREHOLDERS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY BIG FISH OFFERING OR BIG FISH SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT BIG FISH IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIG FISH LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF BIG FISH OFFERINGS AND OPERATORS OF SOCIAL NETWORKING AND OTHER EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING BIG FISH OFFERINGS AND BIG FISH SOFTWARE, SOCIAL NETWORKING SITES AND OTHER EXTERNAL SITES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

INDEMNIFICATION

You agree to defend, indemnify and hold harmless Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from and against any and all liabilities, claims and expenses, including attorneys' fees, that arise from a breach of these Terms of Use for which you are responsible or in connection with your transmission of any content to, on or through any Big Fish Offering. Without limiting your indemnification obligations described herein, Big Fish reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

IMPORT TAXES AND FEES

When you buy physical goods (e.g. disc) through any Big Fish Offering for delivery outside the United States, you are considered an importer and, as between you and Big Fish, you will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and you must comply with all laws and regulations of the country in which you are receiving the goods. Note that cross-border deliveries are subject to opening and inspection by customs authorities.

CORRECTIONS

Big Fish reserves the right to revoke any stated offer and to correct any errors, inaccuracies or omissions (including after an order was submitted and accepted) in any order, price, advertisement, promotion or giveaway.

NON-WAIVER

If we do not enforce our rights under these Terms of Use, that does not waive our right to do so later. Any waiver of our rights, including any waiver of any breach or default, must be in a written agreement signed by Big Fish.

PROCESSING CREDIT AND DEBIT CARD PAYMENTS

By purchasing a Big Fish Offering, you authorize your credit or debit card issuer to immediately charge or debit your account, as applicable, for the purchase amount. Purchases of Big Fish Offerings are processed in the United States. Your bank or credit or debit card issuer may charge you foreign transaction fees if they are located outside of the United States.

EXPORT CONTROL LAWS

Certain Big Fish Offerings may be subject to United States and international export controls. By accessing Big Fish Offerings, you warrant that you are not located in any country, or exporting any Big Fish Offerings, to any person or place to which the United States, European Union or any other jurisdiction has embargoed goods. You agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Big Fish Offerings that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

OTHER LEGAL TERMS

You agree that these Terms of Use are not intended to confer and do not confer any rights or remedies upon any third party. If any part of these Terms of Use are held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. If any provision of these Terms of Use is found to be illegal or unenforceable, these Terms of Use will be deemed modified to the extent necessary to make them legal and enforceable, and will remain, as modified, in full force and effect. These Terms of Use, including all terms and policies referenced herein, contain the entire understanding, and supersede all prior agreements, between you and Big Fish relating to this subject matter, and cannot be changed or terminated orally.

PRIVACY

For information about how we collect, use, share and otherwise process information about you, please see our Privacy Policy.

APPLICABLE LAW, JURISDICTION, AND VENUE

These Terms of Use and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Washington, exclusive of conflict or choice of law rules.

The parties acknowledge that these Terms of Use evidence a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted under these Terms of Use shall be governed by the Federal Arbitration Act (9 U.S.C., §§ 1-16).

You and Big Fish irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in King County, Washington, for all disputes arising out of or relating to these Terms of Use, the subject matter of these Terms of Use, or your access to and use of any Big Fish Offering, that are heard in court (not arbitration).

DISPUTE RESOLUTION BY BINDING ARBITRATION

PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION CAREFULLY, BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH BIG FISH AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.

THIS PROVISION PRECLUDES YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH. IT ALSO PRECLUDES YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH BY SOMEONE ELSE. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE AND YOU SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED IN THIS AGREEMENT, AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS REGARDING THE CONSEQUENCES OF YOUR DECISION. YOU MAY OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS BELOW.

Scope of Arbitration Provision. You and Big Fish agree that any dispute, claim or controversy arising out of or relating to your access to or use of any Big Fish Offering or to these Terms of Use (including without limitation any dispute concerning the breach, enforcement, construction, validity, interpretation, enforceability, or arbitrability of these Terms of Use) (a "Dispute"), shall be determined by arbitration, except that you and Big Fish are NOT required to arbitrate any Dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

Location of Arbitration and Applicable Rules. You and Big Fish agree that such arbitration shall occur in King County, Washington. You may request to appear in such proceedings telephonically. You and Big Fish agree that such arbitration shall be conducted by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by these Terms of Use.

Authority of Arbitrator. With the exception of class procedures and remedies as discussed below under "Waiver of Class Relief," the arbitrator shall have the authority to grant any remedy that would otherwise be available in court.

Confidentiality. You and Big Fish shall maintain the confidential nature of the arbitration proceedings and the arbitration award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision

Allocation of Arbitration Fees. If you assert a Dispute as a consumer, you will only be required to pay arbitration fees of \$250 of the fees charged by JAMS in connection with any arbitration under this section, and Big Fish will bear all other costs charged by JAMS or the arbitrator, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services. You will still be responsible for paying your own attorneys' fees.

WAIVER OF CLASS RELIEF. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AGREE THAT YOU AND BIG FISH WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING. YOU AND BIG FISH ARE EACH WAIVING RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Procedure to Opt Out of Arbitration Provision. You may opt out of this arbitration provision only by written Notice via U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.) to Big Fish, Attn: Legal Department, at 906 Alaskan Way, Suite 700, Seattle, WA, 98104. You must send such Notice within thirty (30) days of your acceptance of these Terms of Use. You must sign and date the Notice, and include in it your name, address, and a clear statement that you do not wish to resolve disputes with Big Fish through arbitration. If you do not follow this procedure by your thirty (30) day deadline to do so, then you and Big Fish shall both be bound by the terms of this section entitled Dispute Resolution by Binding Arbitration.

If any portion of this section entitled "Dispute Resolution by Binding Arbitration" is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

STATUTE OF LIMITATIONS

You and Big Fish agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to these Terms of Use or a Big Fish Offering must be filed within (ONE) (1) year after such claim arose; and is thereafter forever barred.

SEVERABILITY

If any part of these Terms of Use is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

CALIFORNIA NOTICE

Under California Civil Code Section 1789.3, California consumers are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N-112, Sacramento, California 95834, or by telephone at 1 (800) 952-5210.

CONTACT US

Big Fish Games, Inc.
Attn: Legal Department
906 Alaskan Way, Suite 700
Seattle, Washington 98104
USA

DIGITAL MILLENNIUM COPYRIGHT ACT

In accordance with the Digital Millennium Copyright Act (“DMCA”) and other applicable laws, we have adopted a policy of terminating, in appropriate circumstances, the accounts of users who repeatedly infringe the intellectual property rights of others. If you believe that anything on Big Fish Offerings infringes any copyright that you own or control, you may notify Big Fish's Designated Agent listed below. For your notice to be effective, it must include the following information per the DMCA:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) A description of the copyrighted work that you claim has been infringed upon;
- (iii) A description of where the material that you claim is infringing is located within the Big Fish Offering;
- (iv) Information reasonably sufficient to permit Big Fish to contact you, such as address, telephone number, and, if available, an e-mail address at which you may be contacted;
- (v) A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please note that if you knowingly misrepresent that any activity or material on Big Fish Offerings is infringing, you may be liable to Big Fish for certain costs and damages.

Big Fish's Designated Agent is:

Big Fish Games, Inc.
Attn: Legal Department
906 Alaskan Way, Suite 700
Seattle, Washington 98104
USA

Exhibit D

Big Fish Terms of Use

Last modified: March 28, 2019

AGREEMENT AND SERVICES

Please read these Terms of Use carefully, including the mandatory arbitration provision in the section titled "Dispute Resolution by Binding Arbitration", which requires that disputes are resolved by final and binding arbitration on an individual and not a class-wide or consolidated basis. If you do not wish to be subject to arbitration, you may opt out of the arbitration provision by following the instructions provided at the end of the section titled "Dispute Resolution by Binding Arbitration".

By accessing or using any Big Fish Offering, you agree to be bound by these Terms of Use and all terms incorporated by reference. If you do not agree to these Terms of Use in their entirety, do not use any Big Fish Offerings.

You must be at least thirteen (13) years of age, or sixteen (16) years of age if you are located in the European Union, to create a Big Fish account or to access or use most Big Fish Offerings. You must be at least eighteen (18) years of age to access or use Big Fish Offerings involving social casino-style game play ("Restricted Offerings," which include but are not limited to the video games Big Fish Casino and Jackpot Magic Slots). If you are younger than eighteen (18) (or the age of legal majority where you live): (1) you may not access or use Restricted Offerings, and (2) you may use the Big Fish Offerings (other than Restricted Offerings) only under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use. If you are a parent or legal guardian of a user under the age of eighteen (18), you agree to be fully responsible for the acts or omissions of such user in relation to any Big Fish Offering.

Big Fish Games, Inc. and/or its Affiliates provide access to the Big Fish Offerings subject to the conditions set forth in these Terms of Use. For purposes of these Terms of Use, the term "**Affiliates**" means, with respect to any party, any person or entity which controls, is controlled by, or is under common control with, such party, and the term "**Big Fish Offerings**" means the web sites of Big Fish, including www.bigfishgames.com, any other sites on which these Terms of Use are posted, and any other Big Fish application, service or product licensed, downloaded or otherwise accessed by you through third party sites or sources, including the products and services available through any of the foregoing.

These Terms of Use are entered into between you and Big Fish Games, Inc. The term "Big Fish" means Big Fish Games, Inc. along with its Affiliates.

Use of the Big Fish Software, as hereafter defined, is governed by the [Big Fish Games, Inc. End User License Agreement](#).

Without limiting the foregoing, each of your Big Fish Offering account(s) (each a "Big Fish account"), if applicable, and participation in any Big Fish Offerings are governed by these Terms of Use. The Big Fish Offerings are always evolving, so it is important that you periodically check these Terms of Use, as well as the specific rules for any games or activities in which you choose to participate, for updates. Big Fish reserves the right to change or modify these Terms of Use at any time and in our sole discretion. If Big Fish makes changes to these Terms of Use, we will provide notice of such changes, such as (by way of example only) by providing notice through the Big Fish Offerings or updating the "Last Modified" date at the top of these Terms of Use. If we revise these Terms of Use, such revision(s) will take effect immediately such notice. Your continued access or use of any Big Fish Offering constitutes your acceptance of the revised Terms of Use. We encourage you to frequently review these Terms of Use to ensure that you understand the terms and conditions that apply to your use of the Big Fish Offerings. If you do not agree to any of these Terms of Use, you should discontinue using or participating in any and all Big Fish Offerings. If there is a conflict between these Terms of Use and any other rules or instructions posted within a Big Fish Offering, these Terms of Use will control.

ACCOUNT REGISTRATION

If you create a Big Fish account within any Big Fish Offering, you must provide truthful and accurate information to us in creating such account and promptly update this information if it changes. If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access a Big Fish Offering, and refuse any and all current or future use of or access to any or all Big Fish Offerings (or any portion thereof).

Big Fish reserves the right to limit the number of accounts a user can establish. This limit may change over time in our sole discretion.

You are solely responsible for all activity on any and all of your Big Fish account(s) and for the security of your computer system. You should not reveal your username or password to any other person. Big Fish will not ask you to reveal your password. If you forget your password, you can request to have a new password sent to your registered e-mail address. You agree to indemnify and hold Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers harmless for any improper or illegal use of any of your Big Fish account(s). This includes illegal or improper use by someone to whom you have given permission to use your Big Fish account(s) or whom you have negligently allowed to access your Big Fish account(s). Big Fish reserves the right to terminate your Big Fish account(s) if any activity that occurs with respect to such account(s) violates these Terms of Use.

ELECTRONIC COMMUNICATIONS

When you access a Big Fish Offering, send e-mails or electronically chat with Big Fish, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices in the Big Fish Offerings. You agree that all agreements, notices, disclosures and other communications that Big Fish provides to you electronically satisfy any legal requirement that such communications be in writing.

VIRTUAL ITEMS

Certain Big Fish Offerings may provide you with the opportunity to license a variety of virtual items such as virtual currency, virtual goods, additional levels and content packs ("virtual items") that can be used while playing the Big Fish Offering. You may be required to pay a fee to obtain virtual items. When you use virtual items within a Big Fish Offering, any virtual items that you have purchased will be deemed used before any virtual items that you have earned.

You have no property interest in any virtual items. Any purchase of virtual items, and virtual items accumulated through any applicable Big Fish Offering membership benefits, are purchases of a limited, non-transferable, revocable license to use those virtual items within the applicable Big Fish Offering. Virtual items may not be transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service. Virtual Items may not be purchased or sold from any individual or other company via cash, barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or use products or services other than within the applicable Big Fish Offering. Virtual items cannot be refunded or exchanged for cash or any other tangible value.

Big Fish may manage, regulate, control, modify or eliminate your virtual items in our sole discretion, and Big Fish will have no liability to you or anyone for exercising those rights. In addition, all virtual items are unconditionally forfeited if your Big Fish Offering account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering or any portion or feature of any Big Fish Offering.

Big Fish has no liability for hacking or loss of your virtual items. Big Fish has no obligation to, and will not, reimburse you for any virtual items lost due to your violation of these Terms of Use. Big Fish reserves the right, without prior notification, to limit the order quantity on any virtual items and/or to refuse to provide you with any virtual items. Price and availability of virtual items are subject to change without notice.

SOCIAL NETWORK SITES

If you access a Big Fish Offering via a third party social networking site (a "**Social Game**"), you should be aware that Social Games are only available to individuals who have registered with the social networking site through which s/he accesses Social Games. You agree that your social networking site account information is accurate, current and complete.

If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access Social Games and refuse any and all current or future use of or access to Social Games (or any portion thereof).

REVIEWS, COMMUNICATIONS AND SUBMISSIONS

Generally

Without limiting the scope of these Terms of Use, you agree to comply with our [Forum FAQ](#) and [Review Guidelines](#) when you submit reviews, forum posts and other content via any Big Fish Offering. Inappropriate,

obscene, defamatory, offensive language, crude or explicit sexual content, discussions of any matters which are explicitly or by inference illegal in any way, discussions of illegal or any other drugs, and racially and ethnically offensive speech are examples of unsuitable content that are not permitted within the Big Fish Offerings. Content standards may vary depending on where you are within a Big Fish Offering and the expectations of the relevant game community. Some game play may involve use of stronger language than others, including mild expletives. You should always use your best and most respectful and conservative judgment in interacting as part of any game play, and submitting any content, such as a review or post to any forums or message boards, within a Big Fish Offering.

We expressly reserve the right, but have no obligation, to: (a) monitor any communications within the Big Fish Offerings, including, without limitation, to ensure that appropriate standards of online conduct are being observed, and (b) immediately or at any time remove any content that we deem objectionable or unsuitable in our sole discretion. Big Fish does not endorse, approve, or prescreen any content that you or other users post or communicate on or through any Big Fish Offerings. Big Fish does not assume any responsibility or liability for any content that is generated, posted or communicated by any user on or through the Big Fish Offerings. You agree to indemnify Big Fish and each of their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from any liability or damages arising out of or resulting from any content you post or communicate on or through the Big Fish Offerings.

Without limiting the generality of these policies and standards, the following actions are examples of behavior that violate these Terms of Use and may result in any or all of your Big Fish account(s) being immediately suspended or terminated:

- Posting, transmitting, promoting, or distributing any content that is illegal
- Harassing or threatening any other user of a Big Fish Offering or any employee or contractor of Big Fish
- Impersonating another person, indicating that you are a Big Fish employee or a representative of Big Fish (if you are not), or attempting to mislead users by indicating that you represent Big Fish in any way
- Attempting to obtain a password, other account information, or other private information from any other user of a Big Fish Offering
- Uploading any software, files, photos, images or any other content to a Big Fish Offering that you do not own or have the legal right to freely distribute, or that contain a virus or corrupted data, or any other malicious or invasive code or program
- Posting messages for any purpose other than personal communication, including without limitation advertising, promotional materials, chain letters, pyramid schemes, political campaigning, soliciting funds, mass mailings and sending "spam", or making any commercial use of any Big Fish Offering
- Disrupting the normal flow of dialogue, or otherwise acting in a manner that negatively affects or disrupts other users.
- Improperly using any game support functions or complaint buttons, or making false complaints or other reports to Big Fish representatives.
- Posting or communicating any player's real-world personal information within a Big Fish Offering or by or through a Big Fish Offering or any related bulletin board.
- Uploading or transmitting, or attempting to upload or transmit, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, gifs, 1x1 pixels, web bugs, and other similar devices.
- Using or launching any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses a Big Fish Offering, or using or launching any unauthorized script or other software.
- Using a false e-mail address or otherwise disguising the source of any content that you submit within a Big Fish Offering, or using tools which anonymize your internet protocol address.
- Interfering or circumventing any Big Fish Offering security feature or any feature that restricts or enforces limitations on use of or access to a Big Fish Offering.
- Attempting to sell any part of a Big Fish Offering, including, without limitation, any virtual items (if applicable), Big Fish accounts and access to them in exchange for real currency or items of monetary or other value.
- Engaging in cheating or any other activity that Big Fish deems to be in conflict with the spirit of a Big Fish Offering.

Public Nature of Communications

You acknowledge and agree that your submitted content, including your reviews and your communications with other users via online messaging, private messaging, forums or bulletin boards, and any other similar types of communications and submissions on or through any Big Fish Offering, are non-confidential, public communications, and you have no expectation of privacy concerning your use of or participation in any Big Fish Offerings (other than with respect to the information you provide to us in establishing your Big Fish account(s), if applicable). You acknowledge that personal information that you communicate publicly within any Big Fish Offering may be seen and used by others and may result in unsolicited communications. Big Fish is not liable for any information that you choose to submit or communicate to other users on or through any Big Fish Offerings, or for the actions of any other users of any Big Fish Offering.

You represent and warrant that you have all necessary rights in and to any materials that you post within any Big Fish Offering, that such materials do not infringe any proprietary or other rights of third parties, that all such content is accurate and will not cause injury to any person or entity, and that you will indemnify Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers for all claims resulting from your submitted and posted content. If any such materials incorporate the name, voice, likeness and/or image of any individual, you represent and warrant that you have the right to grant Big Fish permission to use any such name, voice, likeness and/or image of such individual appearing in the materials you post throughout the world in perpetuity. Once you post or communicate any content or materials on or through a Big Fish Offering, you expressly grant Big Fish the complete, worldwide, fully sublicensable and irrevocable right to quote, re-post, use, reproduce, modify, adapt, publish, translate, create derivative works from, display, distribute, transmit, and broadcast such content or materials, including without limitation the name you submit in connection with such content or materials, in any form, with or without attribution to you, and without any notice or compensation to you of any kind. We reserve the right to immediately remove any content that may be considered, in our sole discretion, in violation of the rights of any third party.

Commercial Activity and Unsolicited E-mail

You may not use any portion of the Big Fish Offerings to collect information, including login names, about other users, and use of such information to send unsolicited e-mail or for any other purpose is strictly prohibited. You may not advertise any goods or services on any Big Fish Offerings, or otherwise exploit your participation on or through any Big Fish Offerings for any commercial purpose.

Customer Reviews

You may submit reviews of certain Big Fish Offerings. Use of the reviews feature is for your personal, non-commercial use and is at your own option and risk, and you must comply with the policies set forth in these Terms of Use and the [Review Guidelines](#).

When you post a review, we will display your rating of the Big Fish Offering, along with your user name and certain other information you may provide, such as your city and state location, skill level, favorite game and favorite genres. By submitting a review, you are consenting to the release of all information that you provide in that review to a public forum. If you do not want any such information to be shared in a public forum, do not use the review feature.

BIG FISH SOFTWARE

We may require that you download certain software from Big Fish, its principals or its licensors onto your computer ("**Big Fish Software**"). Subject to your compliance with these Terms of Use, Big Fish grants to you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to use the Big Fish Software to participate in the Big Fish Offerings. The Big Fish Software is for your personal use, and may not be reproduced, duplicated, copied, resold, sublicensed, or otherwise used in whole or in part by you for commercial purposes. You may not modify, translate, reverse-engineer, reverse-compile or decompile, disassemble or create derivative works from any of the Big Fish Software.

NEITHER BIG FISH GAMES, INC. NOR ITS LICENSORS IS LIABLE FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF ANY BIG FISH SOFTWARE (INCLUDING LIABILITY FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES OR DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE), AND THE ENTIRE RISK OF USE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE TO YOUR COMPUTER HARDWARE OR SOFTWARE, RESULTING FROM ANY USE OF THE BIG FISH SOFTWARE, RESIDES WITH YOU.

THIRD PARTY LINKS AND THIRD PARTY CONTENT AND SERVICES

Any and all software, content and services (including advertising) within a Big Fish Offering that are not owned by Big Fish are "**third party content and services.**" Big Fish acts merely as an intermediary service provider of, and accepts no responsibility or liability for, third party content and services. In addition and without limiting the generality of the foregoing, certain Big Fish Offerings may include links to sites operated by third parties, including advertisers and other content providers. Those sites may collect data or solicit personal information from you. Big Fish does not

control such sites, and is not responsible for their content, policies, or collection, use or disclosure of any information those sites may collect.

VIOLATION OF THESE TERMS OF USE

If you violate our Terms of Use, Big Fish reserves the right, in its sole discretion, to immediately terminate your participation in any or all Big Fish Offerings, including any and all Big Fish accounts you have established. You acknowledge that Big Fish is not required to notify you prior to terminating any such account.

TERMINATION OF ANY BIG FISH ACCOUNT

Big Fish and you each have the right to terminate or cancel any of your Big Fish account(s), if applicable, at any time for any reason. You understand and agree that cancellation of your Big Fish account(s) and/or ceasing use of any and all Big Fish Offerings are your sole right and remedy with respect to any dispute with Big Fish. This includes, but is not limited to, any dispute arising out of or directly or indirectly related to: (a) any provision contained in or Big Fish's enforcement or application of these Terms of Use or any other agreement between you and Big Fish, (b) the content available on or through the Big Fish Offerings, or any change in or to such content, (c) your ability to access and/or use any Big Fish Offerings, or (d) the amount or type of any fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods, in each case imposed or implemented by Big Fish on or through any Big Fish Offering.

Big Fish reserves the right to collect fees, surcharges or costs incurred before you cancel your Big Fish account(s) or a particular subscription. In the event that your Big Fish account or a particular subscription is terminated or cancelled, no refund will be granted, no online time or other credits (e.g., points in an online game) will be credited to you or converted to cash or other form of reimbursement, and you will have no further access to your account or anything associated with it (such as points, tokens or in-game items). Any delinquent or unpaid accounts must be settled before Big Fish may allow you to create any new or additional accounts. All virtual items are unconditionally forfeited if your Big Fish account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering that includes virtual items.

Without limiting the foregoing provisions, if you violate these Terms of Use, Big Fish may issue you a warning regarding the violation, or, in Big Fish's sole discretion, immediately terminate any and all Big Fish accounts that you have established with any Big Fish Offering, with or without notice.

INTELLECTUAL PROPERTY RIGHTS

Big Fish Games, Inc. and the names and logos, our product or service names, our slogans and the look and feel of the Big Fish Offerings trademarks or trade dress of Big Fish and may not be copied, imitated, or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Big Fish Offerings are the property of their respective owners, who may or may not be affiliated with or connected to Big Fish. If you fail to adhere to these Terms of Use, other content owners may take criminal or civil action against you. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier or otherwise, does not constitute or imply endorsement, sponsorship or recommendation by us.

LIMITATIONS ON WARRANTIES AND LIABILITY

YOU EXPRESSLY AGREE THAT THE USE OF ANY BIG FISH OFFERING, BIG FISH SOFTWARE AND THE INTERNET IS AT YOUR SOLE RISK. ALL BIG FISH OFFERINGS AND BIG FISH SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BIG FISH DOES NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE BIG FISH OFFERINGS OR BIG FISH SOFTWARE AT ANY PARTICULAR TIMES OR LOCATIONS, OR THAT THE BIG FISH OFFERINGS, BIG FISH SOFTWARE, NEWSLETTERS, E-MAILS OR OTHER COMMUNICATIONS SENT FROM BIG FISH ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BIG FISH IS TO STOP USING THE BIG FISH OFFERINGS AND BIG FISH SOFTWARE, AND TO CANCEL ANY AND ALL OF YOUR BIG FISH ACCOUNTS, IF APPLICABLE. YOU ACKNOWLEDGE AND AGREE THAT BIG FISH IS NOT LIABLE FOR ANY ACT OR FAILURE TO ACT ON ITS OWN PART, OR FOR ANY CONDUCT OF, OR COMMUNICATION OR CONTENT POSTED WITHIN A BIG FISH OFFERING BY, ANY BIG FISH OFFERING

USER. IN NO EVENT SHALL BIG FISH'S OR ITS EMPLOYEES', CONTRACTORS', OFFICERS', DIRECTORS' OR SHAREHOLDERS' LIABILITY TO YOU EXCEED THE AMOUNT THAT YOU PAID TO BIG FISH FOR YOUR PARTICIPATION IN ANY BIG FISH OFFERING. IN NO CASE SHALL BIG FISH OR ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS OR SHAREHOLDERS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY BIG FISH OFFERING OR BIG FISH SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT BIG FISH IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIG FISH LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF BIG FISH OFFERINGS AND OPERATORS OF SOCIAL NETWORKING AND OTHER EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING BIG FISH OFFERINGS AND BIG FISH SOFTWARE, SOCIAL NETWORKING SITES AND OTHER EXTERNAL SITES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

INDEMNIFICATION

You agree to defend, indemnify and hold harmless Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from and against any and all liabilities, claims and expenses, including attorneys' fees, that arise from a breach of these Terms of Use for which you are responsible or in connection with your transmission of any content to, on or through any Big Fish Offering. Without limiting your indemnification obligations described herein, Big Fish reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

IMPORT TAXES AND FEES

When you buy physical goods (e.g. disc) through any Big Fish Offering for delivery outside the United States, you are considered an importer and, as between you and Big Fish, you will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and you must comply with all laws and regulations of the country in which you are receiving the goods. Note that cross-border deliveries are subject to opening and inspection by customs authorities.

CORRECTIONS

Big Fish reserves the right to revoke any stated offer and to correct any errors, inaccuracies or omissions (including after an order was submitted and accepted) in any order, price, advertisement, promotion or giveaway.

NON-WAIVER

If we do not enforce our rights under these Terms of Use, that does not waive our right to do so later. Any waiver of our rights, including any waiver of any breach or default, must be in a written agreement signed by Big Fish.

PROCESSING CREDIT AND DEBIT CARD PAYMENTS

By purchasing a Big Fish Offering, you authorize your credit or debit card issuer to immediately charge or debit your account, as applicable, for the purchase amount. Purchases of Big Fish Offerings are processed in the United States. Your bank or credit or debit card issuer may charge you foreign transaction fees if they are located outside of the United States.

EXPORT CONTROL LAWS

Certain Big Fish Offerings may be subject to United States and international export controls. By accessing Big Fish Offerings, you warrant that you are not located in any country, or exporting any Big Fish Offerings, to any person or place to which the United States, European Union or any other jurisdiction has embargoed goods. You agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Big Fish Offerings that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

OTHER LEGAL TERMS

You agree that these Terms of Use are not intended to confer and do not confer any rights or remedies upon any third party. If any part of these Terms of Use are held invalid or unenforceable, that portion shall be construed in a

manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. If any provision of these Terms of Use is found to be illegal or unenforceable, these Terms of Use will be deemed modified to the extent necessary to make them legal and enforceable, and will remain, as modified, in full force and effect. These Terms of Use, including all terms and policies referenced herein, contain the entire understanding, and supersede all prior agreements, between you and Big Fish relating to this subject matter, and cannot be changed or terminated orally.

PRIVACY

For information about how we collect, use, share and otherwise process information about you, please see our [Privacy Policy](#).

APPLICABLE LAW, JURISDICTION, AND VENUE

These Terms of Use and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Washington, exclusive of conflict or choice of law rules.

The parties acknowledge that these Terms of Use evidence a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted under these Terms of Use shall be governed by the Federal Arbitration Act (9 U.S.C., §§ 1-16).

You and Big Fish irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in King County, Washington, for all disputes arising out of or relating to these Terms of Use, the subject matter of these Terms of Use, or your access to and use of any Big Fish Offering, that are heard in court (not arbitration).

DISPUTE RESOLUTION BY BINDING ARBITRATION

PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION CAREFULLY, BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH BIG FISH AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.

THIS PROVISION PRECLUDES YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH. IT ALSO PRECLUDES YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH BY SOMEONE ELSE. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE AND YOU SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED IN THIS AGREEMENT, AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS REGARDING THE CONSEQUENCES OF YOUR DECISION. YOU MAY OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS BELOW.

Scope of Arbitration Provision. You and Big Fish agree that any dispute, claim or controversy arising out of or relating to your access to or use of any Big Fish Offering or to these Terms of Use (including without limitation any dispute concerning the breach, enforcement, construction, validity, interpretation, enforceability, or arbitrability of these Terms of Use) (a "**Dispute**"), shall be determined by arbitration, except that you and Big Fish are NOT required to arbitrate any Dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

Location of Arbitration and Applicable Rules. You and Big Fish agree that such arbitration shall occur in King County, Washington. You may request to appear in such proceedings telephonically. You and Big Fish agree that such arbitration shall be conducted by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by these Terms of Use.

Authority of Arbitrator. With the exception of class procedures and remedies as discussed below under "Waiver of Class Relief," the arbitrator shall have the authority to grant any remedy that would otherwise be available in court.

Confidentiality. You and Big Fish shall maintain the confidential nature of the arbitration proceedings and the arbitration award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

Allocation of Arbitration Fees. If you assert a Dispute as a consumer, you will only be required to pay arbitration fees of \$250 of the fees charged by JAMS in connection with any arbitration under this section, and Big Fish will bear all other costs charged by JAMS or the arbitrator, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services. You will still be responsible for paying your own attorneys' fees.

WAIVER OF CLASS RELIEF. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AGREE THAT YOU AND BIG FISH WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING. YOU AND BIG FISH ARE EACH WAIVING RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN A CLASS ACTION.

Procedure to Opt Out of Arbitration Provision. You may opt out of this arbitration provision only by written Notice via U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.) to Big Fish, Attn: Legal Department, at 906 Alaskan Way, Suite 700, Seattle, WA, 98104. **You must send such Notice within thirty (30) days of your acceptance of these Terms of Use.** You must sign and date the Notice, and include in it your name, address, and a clear statement that you do not wish to resolve disputes with Big Fish through arbitration. If you do not follow this procedure by your thirty (30) day deadline to do so, then you and Big Fish shall both be bound by the terms of this section entitled Dispute Resolution by Binding Arbitration.

If any portion of this section entitled "Dispute Resolution by Binding Arbitration" is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

STATUTE OF LIMITATIONS

You and Big Fish agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to these Terms of Use or a Big Fish Offering must be filed within (ONE) (1) year after such claim arose; and is thereafter forever barred.

SEVERABILITY

If any part of these Terms of Use is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

CALIFORNIA NOTICE

Under California Civil Code Section 1789.3, California consumers are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N-112, Sacramento, California 95834, or by telephone at 1 (800) 952-5210.

CONTACT US

Big Fish Games, Inc.
Attn: Legal Department
906 Alaskan Way, Suite 700
Seattle, Washington 98104
USA

DIGITAL MILLENNIUM COPYRIGHT ACT

In accordance with the Digital Millennium Copyright Act ("DMCA") and other applicable laws, we have adopted a policy of terminating, in appropriate circumstances, the accounts of users who repeatedly infringe the intellectual property rights of others. If you believe that anything on Big Fish Offerings infringes any copyright that you own or control, you may notify Big Fish's Designated Agent listed below. For your notice to be effective, it must include the following information per the DMCA:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) A description of the copyrighted work that you claim has been infringed upon;
- (iii) A description of where the material that you claim is infringing is located within the Big Fish Offering;
- (iv) Information reasonably sufficient to permit Big Fish to contact you, such as address, telephone number, and, if available, an e-mail address at which you may be contacted;

(v) A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and

(vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please note that if you knowingly misrepresent that any activity or material on Big Fish Offerings is infringing, you may be liable to Big Fish for certain costs and damages.

Big Fish's Designated Agent is:

Big Fish Games, Inc.
Attn: Legal Department
906 Alaskan Way, Suite 700
Seattle, Washington 98104
USA

Exhibit E

Big Fish Terms of Use

Last modified: August 28, 2019

AGREEMENT AND SERVICES

Please read these Terms of Use carefully, including the mandatory arbitration provision in the section titled “Dispute Resolution by Binding Arbitration,” which requires that any past, current, or future disputes are resolved by final and binding arbitration on an individual and not a class-wide or consolidated basis. If you do not wish to be subject to arbitration, you may opt out of the arbitration provision by following the instructions provided at the end of the section titled “Dispute Resolution by Binding Arbitration”.

These Terms of Use dated August 28, 2019 do not apply to Cheryl Kater, Suzie Kelly, and Manasa Thimmegowda, who are named plaintiffs in class action lawsuits pending in the Western District of Washington: *Kater v. Churchill Downs Inc.*, Case No. 15-cv-00612-RBL, and *Thimmegowda v. Big Fish Games, Inc.*, Case No. 2:19-cv-00199-RBL. The lawsuits allege claims relating to Big Fish Casino under the Washington Recovery of Money Lost at Gambling statute, the Washington Consumer Protection Act, and Washington common law. The mandatory arbitration provision in these Terms of Use prevents you from participating in these class action lawsuits, even if a class is certified.

By clicking “Accept” or otherwise accessing or using any Big Fish Offering, you agree to be bound by these Terms of Use and all terms incorporated herein by reference. If you do not agree to these Terms of Use in their entirety, you may not use any Big Fish Offerings.

You must be at least thirteen (13) years of age, or sixteen (16) years of age if you are located in the European Union, to create a Big Fish account or to access or use most Big Fish Offerings. You must be at least eighteen (18) years of age to access or use Big Fish Offerings involving social casino-style game play (“Restricted Offerings,” which include but are not limited to the video games Big Fish Casino and Jackpot Magic Slots). If you are younger than eighteen (18) (or the age of legal majority where you live): (1) you may not access or use Restricted Offerings, and (2) you may use the Big Fish Offerings (other than Restricted Offerings) only under the supervision of a parent or legal guardian who agrees to be bound by these Terms of Use. If you are a parent or legal guardian of a user under the age of eighteen (18), you agree to be fully responsible for the acts or omissions of such user in relation to any Big Fish Offering.

Big Fish Games, Inc. and/or its Affiliates provide access to the Big Fish Offerings subject to the conditions set forth in these Terms of Use. For purposes of these Terms of Use, the term “Affiliates” means, with respect to any party, any person or entity which controls, is controlled by, or is under common control with, such party, and the term “Big Fish Offerings” means the web sites of Big Fish, including www.bigfishgames.com, any other sites on which these Terms of Use are posted, and any other Big Fish application, service or product licensed, downloaded or otherwise accessed by you through third party sites or sources, including the products and services available through any of the foregoing, including without limitation the Big Fish Software (as defined herein).

These Terms of Use are entered into between you and Big Fish Games, Inc. The term “Big Fish” means Big Fish Games, Inc. along with its Affiliates.

Without limiting the foregoing, each of your Big Fish Offering account(s) (each a “Big Fish account”), if applicable, and participation in any Big Fish Offerings are governed by these Terms of Use. The Big Fish Offerings are always

evolving, so it is important that you periodically check these Terms of Use, as well as the specific rules for any games or activities in which you choose to participate, for updates. Big Fish reserves the right to change or modify these Terms of Use at any time and in our sole discretion. If Big Fish makes changes to these Terms of Use, we will use commercially reasonable efforts to notify you of such changes, such as (by way of example only) by providing notice through the Big Fish Offerings or updating the "Last Modified" date at the top of these Terms of Use. If we revise these Terms of Use, such revision(s) will take effect immediately such upon posting of such notice. Your continued access or use of any Big Fish Offering after such posting constitutes your acceptance of the revised Terms of Use. We encourage you to frequently review these Terms of Use to ensure that you understand the terms and conditions that apply to your use of the Big Fish Offerings. If you do not agree to any revision we make to these Terms of Use, you must immediately discontinue using and participating in any and all Big Fish Software and Big Fish Offerings. If there is a conflict between these Terms of Use and any other rules or instructions posted within a Big Fish Offering, these Terms of Use will control.

ACCOUNT REGISTRATION

If you create a Big Fish account within any Big Fish Offering, you must provide truthful and accurate information to us in creating such account and promptly update this information if it changes. If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access a Big Fish Offering, and refuse any and all current or future use of or access to any or all Big Fish Offerings (or any portion thereof).

Big Fish reserves the right to limit the number of accounts a user can establish. This limit may change over time in our sole discretion.

You are solely responsible for all activity on any and all of your Big Fish account(s) and for the security of your computer system. You must not reveal your username or password to any other person. Big Fish will not ask you to reveal your password. If you forget your password, you can request to have a new password sent to your registered e-mail address. You agree to indemnify and hold Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers harmless for any improper or illegal use of any of your Big Fish account(s). This includes illegal or improper use by someone to whom you have given permission to use your Big Fish account(s) or whom you have negligently allowed to access your Big Fish account(s). Big Fish reserves the right to terminate your Big Fish account(s) if any activity that occurs with respect to such account(s) violates these Terms of Use.

ELECTRONIC COMMUNICATIONS

When you access a Big Fish Offering, send e-mails or electronically chat with Big Fish, you are communicating with us electronically. You consent to receive communications from us electronically. We will communicate with you by e-mail or by posting notices in the Big Fish Offerings. You agree that all agreements, notices, disclosures and other communications that Big Fish provides to you electronically satisfy any legal requirement that such communications be in writing.

VIRTUAL ITEMS

Certain Big Fish Offerings may provide you with the opportunity to license a variety of virtual items such as virtual currency, virtual goods, additional levels and content packs ("virtual items") that can be used while playing the Big Fish Offering. You may be required to pay a fee to obtain virtual items. When you use virtual items within a Big Fish Offering, any virtual items that you have purchased will be deemed used before any virtual items that you have earned.

You have no property interest in any virtual items. Any purchase of virtual items, and virtual items accumulated through any applicable Big Fish Offering membership benefits, are purchases of a limited, non-transferable, revocable license to use those virtual items within the applicable Big Fish Offering. Virtual items may not be

transferred or resold for commercial gain in any manner, including, without limitation, by means of any direct sale or auction service. Virtual Items may not be purchased or sold from any individual or other company via cash, barter or any other transaction. Virtual items have no monetary value, and cannot be used to purchase or use products or services other than within the applicable Big Fish Offering. Virtual items cannot be refunded or exchanged for cash or any other tangible value.

Big Fish may manage, regulate, control, modify or eliminate your virtual items in our sole discretion, and Big Fish will have no liability to you or anyone for exercising those rights. In addition, all virtual items are unconditionally forfeited if your Big Fish Offering account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering or any portion or feature of any Big Fish Offering.

Big Fish has no liability for hacking or loss of your virtual items. Big Fish has no obligation to, and will not, reimburse you for any virtual items lost due to your violation of these Terms of Use. Big Fish reserves the right, without prior notification, to limit the order quantity on any virtual items and/or to refuse to provide you with any virtual items. Price and availability of virtual items are subject to change without notice.

If Big Fish has reasonable grounds to suspect that you have provided any information that is inaccurate, not current or incomplete, Big Fish may suspend or terminate your ability to use or access Social Games and refuse any and all current or future use of or access to Social Games (or any portion thereof).

REVIEWS, COMMUNICATIONS AND SUBMISSIONS

Generally

Without limiting the scope of these Terms of Use, you agree to comply with our [Forum FAQ](#) and [Review Guidelines](#) when you submit reviews, forum posts and other content via any Big Fish Offering. Inappropriate, obscene, defamatory, offensive language, crude or explicit sexual content, discussions of any matters which are explicitly or by inference illegal in any way, discussions of illegal or any other drugs, and racially and ethnically offensive speech are examples of unsuitable content that are not permitted within the Big Fish Offerings. Content standards may vary depending on where you are within a Big Fish Offering and the expectations of the relevant game community. Some game play may involve use of stronger language than others, including mild expletives. You must always use good, respectful, and conservative judgment in interacting as part of any game play, and submitting any content, such as a review or post to any forums or message boards, within a Big Fish Offering. We expressly reserve the right, but have no obligation, to: (a) monitor any communications within the Big Fish Offerings, including, without limitation, to ensure that appropriate standards of online conduct are being observed, and (b) immediately or at any time remove any content that we deem objectionable or unsuitable in our sole discretion. Big Fish does not endorse, approve, or prescreen any content that you or other users post or communicate on or through any Big Fish Offerings. Big Fish does not assume any responsibility or liability for any content that is generated, posted or communicated by any user on or through the Big Fish Offerings. You agree to indemnify Big Fish and each of their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from any liability or damages arising out of or resulting from any content you post or communicate on or through the Big Fish Offerings.

Without limiting the generality of these policies and standards, the following actions are examples of behavior that violate these Terms of Use and may result in any or all of your Big Fish account(s) being immediately suspended or terminated:

- Posting, transmitting, promoting, or distributing any content that is illegal
- Harassing or threatening any other user of a Big Fish Offering or any employee or contractor of Big Fish

- Impersonating another person, indicating that you are a Big Fish employee or a representative of Big Fish (if you are not), or attempting to mislead users by indicating that you represent Big Fish in any way
- Attempting to obtain a password, other account information, or other private information from any other user of a Big Fish Offering
- Uploading any software, files, photos, images or any other content to a Big Fish Offering that you do not own or have the legal right to freely distribute, or that contain a virus or corrupted data, or any other malicious or invasive code or program
- Posting messages for any purpose other than personal communication, including without limitation advertising, promotional materials, chain letters, pyramid schemes, political campaigning, soliciting funds, mass mailings and sending "spam", or making any commercial use of any Big Fish Offering
- Disrupting the normal flow of dialogue, or otherwise acting in a manner that negatively affects or disrupts other users.
- Improperly using any game support functions or complaint buttons, or making false complaints or other reports to Big Fish representatives.
- Posting or communicating any player's real-world personal information within a Big Fish Offering or by or through a Big Fish Offering or any related bulletin board.
- Uploading or transmitting, or attempting to upload or transmit, any material that acts as a passive or active information collection or transmission mechanism, including, without limitation, gifs, 1x1 pixels, web bugs, and other similar devices.
- Using or launching any automated system, including, without limitation, any spider, bot, cheat utility, scraper or offline reader that accesses a Big Fish Offering, or using or launching any unauthorized script or other software.
- Using a false e-mail address or otherwise disguising the source of any content that you submit within a Big Fish Offering, or using tools which anonymize your internet protocol address.
- Interfering or circumventing any Big Fish Offering security feature or any feature that restricts or enforces limitations on use of or access to a Big Fish Offering.
- Attempting to sell any part of a Big Fish Offering, including, without limitation, any virtual items (if applicable), Big Fish accounts and access to them in exchange for real currency or items of monetary or other value.
- Engaging in cheating or any other activity that Big Fish deems to be in conflict with the spirit of a Big Fish Offering.

Public Nature of Communications

You acknowledge and agree that your submitted content, including your reviews and your communications with other users via online messaging, private messaging, forums or bulletin boards, and any other similar types of communications and submissions on or through any Big Fish Offering, are non-confidential, public communications, and you have no expectation of privacy concerning your use of or participation in any Big Fish Offerings (other than with respect to the registration information you provide to us in establishing your Big Fish account(s), if applicable). You acknowledge that personal information that you communicate publicly within any Big Fish Offering may be seen and used by others and may result in unsolicited communications. Big Fish is not liable for any information that you choose to submit or communicate to other users on or through any Big Fish Offerings, or for the actions of any other users of any Big Fish Offering.

You represent and warrant that you have all necessary rights in and to any materials that you post within any Big Fish Offering, that such materials and Big Fish's use and redistribution thereof as contemplated by the Big Fish Offerings do not infringe any proprietary or other rights of third parties, that all such content is accurate and will not cause injury to any person or entity. You agree to indemnify Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers for all claims resulting from your submitted and posted content. If any such materials incorporate the name, voice, likeness and/or image of any individual, you represent and warrant that you have the right to grant Big Fish unrestricted permission to use any such name, voice, likeness and/or image of such individual appearing in the materials you post throughout the world in perpetuity. Once you post or communicate any content or materials on or through a Big Fish Offering, you expressly grant Big Fish the complete, worldwide, fully sublicensable, perpetual, and irrevocable right to quote, re-post, use, reproduce, modify, adapt, publish, translate, create derivative works from, display, distribute, transmit, and broadcast such content or materials, including without limitation the name you submit in connection with such content or materials, in any form, with or without attribution to you, and without any notice or compensation to you of any kind. We reserve the right to immediately remove any content that may be considered, in our sole discretion, in violation of the rights of any third party.

Commercial Activity and Unsolicited E-mail

You may not use any portion of the Big Fish Offerings to collect information, including login names, about other users, and use of such information to send unsolicited e-mail or for any other purpose is strictly prohibited. You may not advertise any goods or services on any Big Fish Offerings, or otherwise exploit your participation on or through any Big Fish Offerings for any commercial purpose.

Customer Reviews

You may submit reviews of certain Big Fish Offerings. Use of the reviews feature is for your personal, non-commercial use and is at your own option and risk, and you must comply with the policies set forth in these Terms of Use and the [Review Guidelines](#).

When you post a review, we will display your rating of the Big Fish Offering, along with your user name and certain other information you may provide, such as your city and state location, skill level, favorite game and favorite genres. By submitting a review, you are consenting to the release of all information that you provide in that review to a public forum. If you do not want any such information to be shared in a public forum, do not use the review feature.

BIG FISH SOFTWARE

We may require that you download certain software from Big Fish, its principals or its licensors onto your computer or mobile device (such software and any associated media or documentation, "**Big Fish Software**"). The Big Fish Software and other Big Fish Offerings are protected by copyright laws and international copyright treaties, as well as other intellectual property rights, and is licensed, not sold. Subject to your compliance with these Terms of Use, Big Fish grants to you a non-exclusive, non-transferable, non-sublicensable, revocable, limited license to install and use the Big Fish Software on computers or mobile devices owned or controlled by you, solely to participate in the Big Fish Offerings. The Big Fish Software is for your personal use, and except as expressly provided above, may not be reproduced, duplicated, copied, resold, distributed, sublicensed, or otherwise used in whole or in part by you for any purpose. You may not modify, translate, reverse-engineer, reverse-compile or decompile, disassemble or create derivative works from any of the Big Fish Software, except to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

NEITHER BIG FISH NOR ITS LICENSORS ARE LIABLE FOR ANY DAMAGES IN CONNECTION WITH YOUR USE OF ANY BIG FISH SOFTWARE (INCLUDING LIABILITY FOR ANY CONSEQUENTIAL OR

INCIDENTAL DAMAGES OR DAMAGE TO YOUR COMPUTER OR MOBILE DEVICE HARDWARE OR SOFTWARE), AND THE ENTIRE RISK OF USE, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE TO YOUR COMPUTER OR MOBILE DEVICE HARDWARE OR SOFTWARE, RESULTING FROM ANY USE OF THE BIG FISH SOFTWARE, RESIDES WITH YOU.

SOCIAL NETWORK SITES

If you access a Big Fish Offering via a third party social networking site (a "**Social Game**"), you acknowledge that you are aware that Social Games are only available to individuals who have registered with the social networking site through which s/he accesses Social Games. You agree that your social networking site account information is accurate, current and complete. Social networking sites are "third party content and services" as described in the following paragraph.

THIRD PARTY LINKS AND THIRD PARTY CONTENT AND SERVICES

Any and all software, content and services (including advertising) within a Big Fish Offering that are not owned by Big Fish are "**third party content and services.**" Big Fish acts merely as an intermediary service provider of, and accepts no responsibility or liability for, third party content and services. In addition and without limiting the generality of the foregoing, certain Big Fish Offerings may include links to sites, such as social networking sites, operated by third parties, including advertisers and other content providers. Those sites may collect data or solicit personal information from you. Big Fish does not control such sites, and you agree that Big Fish is not responsible for their content, policies, or collection, use or disclosure of any information those sites may collect.

VIOLATION OF THESE TERMS OF USE

If you violate our Terms of Use, Big Fish reserves the right, in its sole discretion, to immediately terminate your participation in any or all Big Fish Offerings, including any and all Big Fish accounts you have established. You acknowledge that Big Fish is not required to notify you prior to terminating any such account.

TERMINATION OF ANY BIG FISH ACCOUNT

Big Fish and you each have the right to terminate or cancel any of your Big Fish account(s), if applicable, at any time for any reason. You understand and agree that cancellation of your Big Fish account(s) and/or ceasing use of any and all Big Fish Offerings are your sole right and remedy with respect to any dispute with Big Fish. This includes, but is not limited to, any dispute arising out of or directly or indirectly related to: (a) any provision contained in or Big Fish's enforcement or application of these Terms of Use or any other agreement between you and Big Fish, (b) the content available on or through the Big Fish Offerings, or any change in or to such content, (c) your ability to access and/or use any Big Fish Offerings, or (d) the amount or type of any fees, surcharges, applicable taxes, billing methods, or any change to the fees, applicable taxes, surcharges or billing methods, in each case imposed or implemented by Big Fish on or through any Big Fish Offering.

Big Fish reserves the right to collect fees, surcharges or costs incurred before you cancel your Big Fish account(s) or a particular subscription. In the event that your Big Fish account or a particular subscription is terminated or cancelled, no refund will be granted, no online time or other credits (e.g., points in an online game) will be credited to you or converted to cash or other form of reimbursement, and you will have no further access to your account or anything associated with it (such as points, tokens or in-game items). Any delinquent or unpaid accounts must be settled before Big Fish may allow you to create any new or additional accounts. All virtual items are unconditionally forfeited if your Big Fish account is terminated or suspended for any reason, in Big Fish's sole discretion, or if Big Fish discontinues any Big Fish Offering that includes virtual items.

Without limiting the foregoing provisions, if you violate these Terms of Use, Big Fish may issue you a warning regarding the violation, or, in Big Fish's sole discretion, immediately terminate any and all Big Fish accounts that you have established with any Big Fish Offering, with or without notice.

INTELLECTUAL PROPERTY RIGHTS

Except for the limited license to use the Big Fish Offerings expressly granted hereunder, Big Fish retains all right, title, and interest in and to the Big Fish Offerings, including any accompanying content and all intellectual property rights therein and thereto.

Big Fish Games, Inc. and the names and logos, product or service names, slogans and the look and feel of the Big Fish Offerings constitute trademarks or trade dress of Big Fish and may not be copied, imitated, or used, in whole or in part, without our prior written permission. All other trademarks, registered trademarks, product names and company names or logos mentioned on the Big Fish Offerings are the property of their respective owners, who may or may not be affiliated with or connected to Big Fish. If you fail to adhere to these Terms of Use, content owners may take criminal or civil action against you. Reference to any products, services, processes or other information by trade name, trademark, manufacturer, supplier or otherwise, does not constitute or imply endorsement, sponsorship or recommendation by us.

If you choose to provide to Big Fish any ideas, suggestions, or other feedback regarding any Big Fish Offerings, or any proposed software or offerings (collectively "Feedback"), you grant to Big Fish a perpetual, irrevocable, non-exclusive, worldwide, fully sublicensable, royalty-free right and license to use and exploit such Feedback without restriction, including in connection with any Big Fish Offerings, or other products or services of Big Fish.

LIMITATIONS ON WARRANTIES AND LIABILITY

YOU EXPRESSLY AGREE THAT THE USE OF ANY BIG FISH OFFERING, BIG FISH SOFTWARE AND THE INTERNET IS AT YOUR SOLE RISK. ALL BIG FISH OFFERINGS AND BIG FISH SOFTWARE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS FOR YOUR USE, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, UNLESS SUCH WARRANTIES ARE LEGALLY INCAPABLE OF EXCLUSION. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, BIG FISH DOES NOT GUARANTEE THAT YOU WILL BE ABLE TO ACCESS OR USE THE BIG FISH OFFERINGS OR BIG FISH SOFTWARE AT ANY PARTICULAR TIMES OR LOCATIONS, OR THAT THE BIG FISH OFFERINGS, BIG FISH SOFTWARE, NEWSLETTERS, E-MAILS OR OTHER COMMUNICATIONS SENT FROM BIG FISH ARE FREE FROM VIRUSES OR OTHER HARMFUL COMPONENTS.

YOU ACKNOWLEDGE AND AGREE THAT YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY DISPUTE WITH BIG FISH IS TO STOP USING THE BIG FISH OFFERINGS AND BIG FISH SOFTWARE, AND TO CANCEL ANY AND ALL OF YOUR BIG FISH ACCOUNTS, IF APPLICABLE. YOU ACKNOWLEDGE AND AGREE THAT BIG FISH IS NOT LIABLE FOR ANY ACT OR FAILURE TO ACT ON ITS OWN PART, OR FOR ANY CONDUCT OF, OR COMMUNICATION OR CONTENT POSTED WITHIN A BIG FISH OFFERING BY, ANY BIG FISH OFFERING USER. IN NO EVENT SHALL BIG FISH'S OR ITS EMPLOYEES', CONTRACTORS', OFFICERS', DIRECTORS' OR SHAREHOLDERS' LIABILITY TO YOU EXCEED THE AMOUNT THAT YOU PAID TO BIG FISH FOR YOUR PARTICIPATION IN ANY BIG FISH OFFERING. IN NO CASE SHALL BIG FISH OR ITS EMPLOYEES, CONTRACTORS, OFFICERS, DIRECTORS OR SHAREHOLDERS BE LIABLE FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF ANY BIG FISH OFFERING OR BIG FISH SOFTWARE. BECAUSE SOME STATES OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR THE LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, IN SUCH STATES OR JURISDICTIONS, SUCH LIABILITY SHALL BE LIMITED TO THE FULL EXTENT PERMITTED BY LAW.

YOU FURTHER SPECIFICALLY ACKNOWLEDGE THAT BIG FISH IS NOT LIABLE, AND YOU AGREE NOT TO SEEK TO HOLD BIG FISH LIABLE, FOR THE CONDUCT OF THIRD PARTIES, INCLUDING OTHER USERS OF BIG FISH OFFERINGS AND OPERATORS OF SOCIAL NETWORKING AND OTHER

EXTERNAL SITES, AND THAT THE RISK OF USING OR ACCESSING BIG FISH OFFERINGS AND BIG FISH SOFTWARE, SOCIAL NETWORKING SITES AND OTHER EXTERNAL SITES, AND OF INJURY FROM THE FOREGOING, RESTS ENTIRELY WITH YOU.

INDEMNIFICATION

Without limiting your other indemnification obligations described herein, You agree to defend, indemnify and hold harmless Big Fish and their respective employees, contractors, officers, directors, shareholders, agents, representatives, vendors, and content providers from and against any and all liabilities, claims and expenses, including attorneys' fees, that arise from a breach of these Terms of Use for which you are responsible or in connection with your transmission of any content to, on or through any Big Fish Offering. Without limiting your indemnification obligations described herein, Big Fish reserves the right, at its own expense, to assume the exclusive defense and control of any matter otherwise subject to indemnification by you.

IMPORT TAXES AND FEES

When you buy physical goods (e.g. disc) through any Big Fish Offering for delivery outside the United States, you are considered an importer and, as between you and Big Fish, you will be responsible for payment of all taxes, duties, fees or other charges that may be applicable to such importation, including VAT, and you must comply with all laws and regulations of the country in which you are receiving the goods. Note that cross-border deliveries are subject to opening and inspection by customs authorities.

CORRECTIONS

Big Fish reserves the right to revoke any stated offer and to correct any errors, inaccuracies or omissions (including after an order was submitted and accepted) in any order, price, advertisement, promotion or giveaway.

NON-WAIVER

If we do not enforce our rights under these Terms of Use, that does not waive our right to do so later. Any waiver of our rights, including any waiver of any breach or default, must be in a written agreement signed by Big Fish.

PROCESSING CREDIT AND DEBIT CARD PAYMENTS

Access to the Big Fish Offerings, or to certain features of the Big Fish Offerings, may require you to pay fees. Before you become obligated to pay any fees, you will have an opportunity to review and accept the fees that you will be charged. All fees are non-refundable, to the fullest extent permitted under applicable law. If Big Fish changes the fees for the Big Fish Offerings, including by adding additional fees or charges, Big Fish will provide you advance notice of those changes. If you do not accept the changes, Big Fish may discontinue providing the Big Fish Offerings to you. Big Fish or its payment processor will charge the payment method you specify at the time of purchase. You authorize Big Fish or its payment processor to charge all sums as described in these Terms of Use, for the Big Fish Offerings you select, to that payment method. If you pay any fees with a credit card, Big Fish or its payment processor may seek pre-authorization of your credit card account prior to your purchase to verify that the credit card is valid and has the necessary funds or credit available to cover your purchase. Fees for the Big Fish Offerings are processed in the United States, and foreign transaction fees may apply if you are located outside the United States. The Big Fish Offerings may include functionality for activating, updating or canceling recurring payments for periodic charges. If you activate or update recurring payments through the Big Fish Offerings, you authorize Big Fish to periodically charge, on a going-forward basis and until cancellation of either the recurring payments or your account, all accrued sums on or before the payment due date for the accrued sums. If you use the Big Fish Offerings to update or cancel any existing authorized one-time or recurring payment, it may take several business days for the update or cancellation to take effect.

EXPORT CONTROL LAWS

Certain Big Fish Offerings may be subject to United States and international export controls. By accessing Big Fish Offerings, you warrant that you are not located in any country, or exporting any Big Fish Offerings, to any person or

place to which the United States, European Union or any other jurisdiction has embargoed goods. You agree to abide by all applicable export control laws and further agree not to transfer or upload, by any means electronic or otherwise, any Big Fish Offerings that may be subject to restrictions under such laws to a national destination prohibited by such laws without obtaining and complying with any required governmental authorizations.

OTHER LEGAL TERMS

You agree that these Terms of Use are not intended to confer and do not confer any rights or remedies upon any third party. If any part of these Terms of Use are held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the parties, and the remaining portions shall remain in full force and effect. If any provision of these Terms of Use is found to be illegal or unenforceable, these Terms of Use will be deemed modified to the extent necessary to make them legal and enforceable, and will remain, as modified, in full force and effect. These Terms of Use, including all terms and policies referenced herein, contain the entire understanding, and supersede all prior agreements, between you and Big Fish relating to this subject matter, and cannot be changed or terminated orally.

PRIVACY

For information about how we collect, use, share and otherwise process information about you, please see our [Privacy Policy](#).

APPLICABLE LAW, JURISDICTION, AND VENUE

These Terms of Use and the rights of the parties hereunder shall be governed by and construed in accordance with the laws of the State of Washington, exclusive of conflict or choice of law rules.

The parties acknowledge that these Terms of Use evidence a transaction involving interstate commerce. Notwithstanding the provision in the preceding paragraph with respect to applicable substantive law, any arbitration conducted under these Terms of Use shall be governed by the Federal Arbitration Act (9 U.S.C., §§ 1-16).

You and Big Fish irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts located in King County, Washington, for all disputes arising out of or relating to these Terms of Use, the subject matter of these Terms of Use, or your access to and use of any Big Fish Offering, that are heard in court (not arbitration).

DISPUTE RESOLUTION BY BINDING ARBITRATION

PLEASE READ THIS "DISPUTE RESOLUTION BY BINDING ARBITRATION" PROVISION CAREFULLY, BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH BIG FISH AND IT LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF.

THIS PROVISION PRECLUDES YOU FROM BRINGING ANY CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH. IT ALSO PRECLUDES YOU FROM PARTICIPATING IN OR RECOVERING RELIEF UNDER ANY CURRENT OR FUTURE CLASS, COLLECTIVE, OR REPRESENTATIVE ACTION AGAINST BIG FISH BY SOMEONE ELSE. IN ADDITION, ARBITRATION PRECLUDES YOU FROM SUING IN COURT OR FROM HAVING A JURY TRIAL.

WHETHER TO AGREE TO ARBITRATION IS AN IMPORTANT DECISION. IT IS YOUR DECISION TO MAKE AND YOU SHOULD NOT RELY SOLELY ON THE INFORMATION PROVIDED IN THIS AGREEMENT, AS IT IS NOT INTENDED TO CONTAIN A COMPLETE EXPLANATION OF THE CONSEQUENCES OF ARBITRATION. YOU SHOULD TAKE REASONABLE STEPS TO CONDUCT FURTHER RESEARCH AND TO CONSULT WITH OTHERS REGARDING THE CONSEQUENCES OF YOUR DECISION. YOU MAY OPT OUT OF THIS ARBITRATION PROVISION BY FOLLOWING THE INSTRUCTIONS BELOW.

Scope of Arbitration Provision. You and Big Fish agree that any dispute, claim or controversy arising out of or relating to your access to or use of any Big Fish Offering or to these Terms of Use, (including without limitation any dispute concerning the breach, enforcement, construction, validity, interpretation, enforceability, or arbitrability of these Terms of Use) (a "**Dispute**"), no matter when such Dispute arose or arises, shall be determined by arbitration, except that you and Big Fish are NOT required to arbitrate any Dispute in which either party seeks equitable and other relief for the alleged unlawful use of copyrights, trademarks, trade names, logos, trade secrets, or patents.

Location of Arbitration and Applicable Rules. You and Big Fish agree that such arbitration shall occur in King County, Washington. You may request to appear in such proceedings telephonically. You and Big Fish agree that such arbitration shall be conducted by a single arbitrator in accordance with the rules of the Judicial Arbitration and Mediation Service ("JAMS"), as modified by these Terms of Use.

Authority of Arbitrator. With the exception of class procedures and remedies as discussed below under "Waiver of Class Relief," the arbitrator shall have the authority to grant any remedy that would otherwise be available in court.

Confidentiality. You and Big Fish shall maintain the confidential nature of the arbitration proceedings and the arbitration award, including the arbitration hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

Allocation of Arbitration Fees. If you assert a Dispute as a consumer, you will only be required to pay arbitration fees of \$250 of the fees charged by JAMS in connection with any arbitration under this section, and Big Fish will bear all other costs charged by JAMS or the arbitrator, including any remaining JAMS Case Management Fee and all professional fees for the arbitrator's services. You will still be responsible for paying your own attorneys' fees.

WAIVER OF CLASS RELIEF. WHETHER THE DISPUTE IS HEARD IN ARBITRATION OR IN COURT, YOU AGREE THAT YOU AND BIG FISH WILL NOT COMMENCE AGAINST THE OTHER A CLASS ACTION, CLASS ARBITRATION OR OTHER REPRESENTATIVE ACTION OR PROCEEDING. YOU AND BIG FISH ARE EACH WAIVING RESPECTIVE RIGHTS TO A TRIAL BY JURY OR TO PARTICIPATE IN ANY PAST, PENDING, OR FUTURE CLASS ACTION OR ANY OTHER CONSOLIDATED OR REPRESENTATIVE PROCEEDING.

Procedure to Opt Out of Arbitration Provision. You may opt out of this arbitration provision only by written Notice via U.S. Mail, or by any nationally recognized delivery service (e.g., UPS, Federal Express, etc.) to Big Fish, Attn: Legal Department, at 906 Alaskan Way, Suite 700, Seattle, WA, 98104. **You must send such Notice within thirty (30) days of your acceptance of these Terms of Use.** You must sign and date the Notice, and include in it your name, address, and a clear statement that you do not wish to resolve disputes with Big Fish through arbitration. If you do not follow this procedure by your thirty (30) day deadline to do so, then you and Big Fish shall both be bound by the terms of this section entitled Dispute Resolution by Binding Arbitration. If any portion of this section entitled "Dispute Resolution by Binding Arbitration" is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

STATUTE OF LIMITATIONS

You and Big Fish agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to these Terms of Use or a Big Fish Offering must be filed within (ONE) (1) year after such claim arose; and is thereafter forever barred.

SEVERABILITY

If any part of these Terms of Use is determined by a court to be inapplicable or invalid, then the remainder shall still be given full force and effect.

CALIFORNIA NOTICE

Under California Civil Code Section 1789.3, California consumers are entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs may be contacted in writing at 1625 N. Market Blvd., Suite N-112, Sacramento, California 95834, or by telephone at 1 (800) 952-5210.

CONTACT US

Big Fish Games, Inc.
Attn: Legal Department
906 Alaskan Way, Suite 700
Seattle, Washington 98104
USA

DIGITAL MILLENNIUM COPYRIGHT ACT

In accordance with the Digital Millennium Copyright Act ("DMCA") and other applicable laws, we have adopted a policy of terminating, in appropriate circumstances, the accounts of users who repeatedly infringe the intellectual property rights of others. If you believe that anything on Big Fish Offerings infringes any copyright that you own or control, you may notify Big Fish's Designated Agent listed below. For your notice to be effective, it must include the following information per the DMCA:

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) A description of the copyrighted work that you claim has been infringed upon;
- (iii) A description of where the material that you claim is infringing is located within the Big Fish Offering;
- (iv) Information reasonably sufficient to permit Big Fish to contact you, such as address, telephone number, and, if available, an e-mail address at which you may be contacted;
- (v) A statement by you that you have a good-faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate and, under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

Please note that if you knowingly misrepresent that any activity or material on Big Fish Offerings is infringing, you may be liable to Big Fish for certain costs and damages.

Big Fish's Designated Agent is:

Big Fish Games, Inc.
Attn: Legal Department
906 Alaskan Way, Suite 700
Seattle, Washington 98104
USA